***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# 76-2006

## United States Court of Appeals

**FOR THE SECOND CIRCUIT**

**Docket No. 76-2006**

UNITED STATES OF AMERICA *ex rel.*
BIRCHEL LEONARD CARSON,
*Petitioner-Appellee,*

—v.—

LARRY TAYLOR, Warden, Metropolitan Correctional Center, and JOHN T. CONNOLLY, Chief Probation Officer, Southern District of New York,
*Respondents-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**APPENDIX FOR RESPONDENTS-APPELLANTS**

ROBERT B. FISKE, JR.,
*United States Attorney*
*for the Southern District of New York*
*Attorney for Respondents-Appellants*

APR 2 1976
SECOND CIRCUIT

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

A 1 Jury demand date:

JUDGE FRANKEL

PRO SE

75 CIV. 4398

FRANKEL,

| TITLE OF CASE | ATTORNEYS |
|---|---|
| 75 CIV 4398 09-08-75 2 530 1 | 0845 e.v. |
| In the Matter of the Application of CARSON, BIRCHEL LEONARD Petitioner vs. MULLER, LARRY, WARDEN, Metropolitan Correction Center and CONNALLY, JOHN T. Chief Probation Officer, Southern District of New York Respondents. | For ~~plaintiff~~: PETITIONER - PRO SE Rubin, Gold & Seiler ~~299 Broadway, New York, N.Y. 10007~~ 233-3330 BIRCHEL LEONARD CARSON 150 Park Row-NYC 10007 For defendant: |

| PROCEEDINGS | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|---|---|---|---|---|
| Filed X | SEP 8 1975 | 9223 | | |
| Filed | | | | |
| Cause of Action: HABEAS CORPUS 28:2243 | | | | |
| Judgment: | | | | |

COSTS

Clerk

Marshal

Docket fee

Witness fees

Depositions

(A)

BEST COPY AVAILABLE

75 CIV 4393 IN THE MATTER OF THE APPLICATION OF BIRCHEL L. [illegible]
TAYLOR, LARRY, WARDEN MCC ETAL

A 2

| DATE | PROCEEDINGS |
|---|---|
| 10-03-75 | (1) Filed Petitioner's writ for habeas corpus. |
| 10-03-75 | (2) Filed Memo Endorsed on unsigned Order to show cause- - - - - - - Mr. Rubin states that the ground of this application is the delay of a hearing. But the hearing is now scheduled. If that schedule is changed, the application may be renewed on short notice. FRANKEL, J |
| 10-03-75 | (3) Filed petitioner's letter to Frankel, J. re: renewal for application for hearing. |
| 10-04-75 | (4) Filed petition to proceed in forma pauperis. |
| 10-06-75 | (5) Filed Memorandum-Decision and Order--OPINION #43201--for the reason stated, the petitioner is now entitled to prompt consideration of the petition lodged with this court. In that view, the respondents are directed to answer the petition not later that 10-14-75. Thereafter, petitioner will have until 10-17-75, for any reply he deems necessary. In the meantime, the petitioner is to be held in his present place of custody( unless, of course, he is sooner released) pending further orders of this court. It is so ordered- FRANKEL, J. ( to Pro Se) |
| 10-15-75 | (6) Filed Respondents Affidavit by Roger H. Berger, U.S. Probation Officer. |
| 10-15-75 | (7) Filed Respondents Affidavit submitted in response to the Writ of Habeas Corpus, by Alan Levine, Asst. U.S. Atty. |
| 10-21-75 | (8) Filed Memorandum -for the reasons stated, Petitiner will have until 10-31-75 for any reply he wishes to make(again to be delivered by the Marshal under arrangements heretofore established for this case). The court will then reach and consider the matter as promptly as our calendar permits. So Ordered. FRANKEL, J (not. Pro Se |
| [illegible]-75 | (9) Filed Government's memorandum of law in opposition to petition for writ of habeas corpus. |
| 10-[illegible]-75 | (10) Filed defts' supplemental affdvt. of Alan Levine in response to petition for writ of habeas corpus and the amended petition for writ of habeas corpus. |
| 11-06-75 | (11) Filed Memorandum-Decision-Opinion # 43395-- for the guidance of petitioner and government counsel, the court records some questions that may be of interest at the hearing scheduled for 9:30 a.m. on 11-11-75. These questions are not necessarily deemed decisive, or necessarily material, at this time. They are meant to outline some uncertainties and problems in the court's mind. Correction of mistaken impressions and illumination of the uncertain areas will be among the contributions petitioner may make for himself and government counsel may offer assistance upon; The questions are as indicated. FRANKEL, J. (FRANKEL, J. ENDORSED) |
| Nov. 10-75 | Filed defts' affvt. of Alan Levine, Ass't USA |
| [illegible]-17-75 | Filed Opinion No. 43389, for the reasons stated, The court will stay its writ for five days to allow time for application to the Court of Appeals or a Judge thereof. If there is no stay by the morning of November 19, 1975, petitioner must be released. To put the determination precisely, the petition is granted and petitioner will be released before 11 a.m. on November 19, 1975. It is so Ordered. FRANKEL, J not |
| 12-4-75 | Filed Supplemental Memorandum #43389 & Order. The court's opinion dtd 11-14-75, is amended as follows: At lines 15 & 16, the portion reading "18 U.S.C. §§ 2314 & 2371 (interstate transportation of forged securities) is changed to read "18 U.S.C. §§ 371 & 2314 (conspiricy & interstate transportation of forged securities)." So Ordered, FRANKEL, J |
| 12-15-75 | Filed Marshal's return. Served: Larry Taylor, Warden, MCC By: Mr. Rivera 11-19-75 |

(B)

////////////// Cont'd Page No.

A - 3

| DATE | PROCEEDINGS |
|---|---|
| 1-7-76 | Filed Notice of appeal by Respondents to the USCA, from the o granting Petitioner's writ of habeas corpus & directi that he be released from custody, entered in this acti 11-14-75. Copy mailed to Birchel Leonard Carson, Peti Pro-SE, c/o The Coffee Grinder, Edgewater Plaza, Biloxi Mississippi, 39531 |
| 1-28-76 | Filed affdvt by Curtis C. Crawford. |
| 1-28-76 | Filed transcript of 11-11-75. |
| 1-28-76 | Filed affdvt of Alan Levine pursuant to the Court's request at hearing on 11-11-76. |
| 1-28-76 | Filed letter dtd 10-1-75 by petitioner. |
| 1-28-76 | Filed letter dtd 10-28-75 by petitioner. |
| 1-28-76 | Filed letter dtd 11-12-75 by petitioner. |
| 1-28-76 | Filed letter dtd 10-9-75 by petitioner. |
| 1-28-76 | Filed letter dtd 10-15-75 by petitioner. |
| 1-28-76 | Filed letter dtd 10-20-75 by petitioner. |
| 1-28-76 | Filed letter dtd 11-1-75 by petitioner. |
| 1-28-76 | Filed letter dtd 10-13-75 by petitioner. |
| 1-28-76 | Filed letter dtd 10-18-75 by petitioner. |

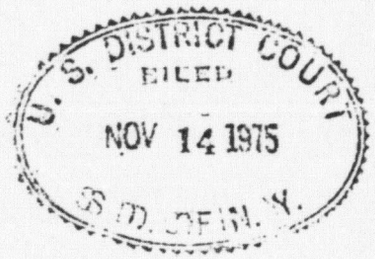
A. E. McCormack, Clerk

By _____ Deputy Clerk

D. C. 109 Criminal Continuation Sheet

A 4 Copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK




UNITED STATES OF AMERICA, ex rel. BIRCHEL LEONARD CARSON,

Petitioner,

-against-

LARRY TAYLOR, Warden, Metropolitan Correctional Center and John T. Connally, Chief Probation Officer, Southern District of New York

Respondents.

PRO SE 75 Civ. 4398

OPINION

#43389

APPEARANCES:

Birchel Leonard Carson Pro Se
Metropolitan Correctional Center
New York, New York 10007

Thomas J. Cahill, United States Attorney
for the Southern District of New York
New York, New York 10007
Attorney for Respondents

Alan Levine, Esq.
Assistant United States Attorney
Of Counsel

FRANKEL, D.J.

The institution of parole has been a lively subject of debate and litigation in the last few years. Responding to the mounting criticisms, the United States

(13)

Board of Parole, under an energetic and creative Chairman, has lately fashioned a number of substantial improvements in its standards and procedures. But progress is not a straight line. The case now before this court reveals a regrettable course of careless, sometimes callous disregard by subordinate parole officials of basic procedural rights. The petitioner, compulsorily released on parole earlier this year, has spent over four months in renewed confinement, having been subjected throughout to a series of grave procedural denials. He seeks, and is entitled to, release on the writ of habeas corpus.

I.

The petitioner was sentenced on June 16, 1972, to a term of five years in prison for violation of 18 U.S.C. §§ 2314 and 2371 (interstate transportation of forged securities). He was not released on parole under the discretionary authority given to the Board of Parole to order such release after service of one-third of the sentence. See 18 U.S.C. §§ 4202 and 4203. Instead, having earned the requisite amount of good time, during a prison career that included substantial amounts of college course work both inside and outside prison walls, he was mandatorily released on January 30, 1975, "at the expiration of his term of sentence less the time deducted for good conduct." 18 U.S.C. § 4163. From the date of his release, he was under the law "deemed as if released

on parole until the expiration of the maximum term * * * for which he was sentenced less one hundred and eighty days." 18 U.S.C. § 4164.

It appears to be undisputed that petitioner has some experience in the entertainment industry, specifically in booking and managing popular music groups. In addition, his college work during confinement included training in computer programming. Having been released in this District, where he had been convicted, and subjected to parole supervision here, he was failing in his efforts to obtain and keep gainful employment. On the other hand, according to his own and other uncontradicted evidence, he had friends who would help him and employment opportunities in Biloxi, Mississippi. Specifically, there appeared to be available there a site, licensing, supportive collaborators, and financing for a discotheque that would serve a tourist trade.

According to petitioner, being unable to reach his parole officer by telephone and not having received his official monthly report form, he sent the required information in a letter to his parole officer. In the same letter, he reported that he was traveling to Mississippi to pursue employment possibilities there. He stated that he would be residing with a friend, Mr. Pat Gill, at 903 Caillavet Street, Biloxi, Mississippi, and gave a telephone number where he could be reached. The parole

officer denies receiving this communication. There was some discussion and speculation at the revocation hearing, not critical now, of the fact that when a violator warrant was later issued against petitioner, F.B.I. agents came straight to Mr. Gill's home where petitioner was found and taken into custody.

Another disquieting circumstance, minor in the array of such things that come ultimately to characterize this case, arises from the parole officer's testimony purporting to discredit petitioner's assertion that he had not received the prescribed form for his supervision report. It had been duly sent, said the parole officer, and returned, as undeliverable. When it was shown, however, that it had been addressed under a former alias no longer used by petitioner, either for parole supervision or for the records of the hotel at which he was living, the parole officer merely observed: "Well, I guess you've got a point there."

On July 2, 1975, a warrant was issued for the arrest of petitioner as an alleged parole violator. The application for the warrant alleged two grounds:

"1. FAILURE TO SUBMIT SUPERVISION REPORT

As of 6/25/75 Mr. Carson has failed to submit his supervision reports for the month of May 1975, according to USPO Berger's report of 6/25/75.

"2. FAILURE TO REPORT CHANGE IN RESIDENCE

On or about 6/1/75 Mr. Carson left his approved residence at the Hotel Empire,

44 West 63rd Street, New York City, N.Y. has failed to report his change in residence to his USPO, according to USPO Berger's report of 6/25/75. Mr. Carson's current whereabouts is unknown."

Petitioner was apprehended on July 3, 1975, and lodged at the Harrison County Jail in Gulfport, Mississippi. On July 15, 1975, he was given a "Preliminary Parole Revocation Hearing" in Gulfport before a probation official there. According to petitioner, he asked the official to request petitioner's New York parole officer, who had applied for the violator warrant, to appear at the hearing so that petitioner might question him. The charging officer did not appear, nor is there any indication whether he was ever asked to or of any reason for his non-appearance. Following this preliminary "hearing," petitioner requested that his formal revocation hearing be held in Mississippi, where the people he had come to live and work with could testify in his behalf. The request was neither granted nor favored with a response.

On August 14, 1975, petitioner was brought to this District and confined in the Metropolitan Correctional Center adjoining this Courthouse. He was to remain there for over a month before a Board of Parole hearing came to be held on whether his parole should be revoked. In September he succeeded in retaining counsel, who initiated the instant proceeding. As begun by a proposed order to show

cause presented on September 8, 1975, the petition sought release on the ground that the hearing had been delayed for an impermissibly long time, during all of which petitioner had remained in jail. When the order came to be presented, however, the court was informed that the hearing was now scheduled and set to begin within a few days, on September 24, 1975. In the circumstances the court concluded that there was no immediate occasion to consider habeas relief, see Davis v. United States, 288 F. Supp. 180 (W.D. Mo. 1968), and declined to sign the order. As will appear below, the delay of the hearing has never been acceptably explained.

The revocation hearing that ensued has been preserved on cassette tapes and a reasonable approximation in typewritten form of what appears on those tapes. The court has read and listened. It may be said that these are not among the records that display us at our best in the administration of justice. The hearing officer in charge repeatedly, and understandably, makes the point that parole revocation hearings are not subject to the procedural formalities of the courtroom. Driving the point home, the hearing record is a vivid display of how casual, unstructured, disorganized, and unfair a proceeding may be thought by some to constitute all the process that is due in a hearing to revoke parole.

In the questioning of petitioner and presumptively, as is now conceded, in ruling against him at the end, the hearing officer relied upon documents that were withheld from the petitioner. The Government has handed these papers to the court in a sealed envelope, still proclaiming its right to keep them concealed from the petitioner. Responding to the question whether it comports with fundamental fairness to rely upon such secret evidence in reaching a decision to re-imprison a man, government counsel assures us this is all right. The explanation given is that parole revocation, as revokees must be comforted to hear, is "not an adversarial process." The foundation for that proposition, and for its specific consequences in this case, is said to be Morrissey v. Brewer, 408 U.S. 471 (1972). For reasons elaborated later, the court rejects this argument. As will also appear, the unfairness of the hearing in this respect is by no means all that vitiates the decision to revoke petitioner's status as a mandatory releasee.

At the conclusion of the hearing, the hearing officers retired for a period, then returned and announced that petitioner had been found a parole violator and that the sanction was to be his re-confinement. These determinations were stated briefly on the record

and then, two weeks later, repeated in substantially the same laconic terms in a written "Notice of Action." As recorded in the latter document, the decision was that petitioner had committed both of the violations charged in the warrant application plus another violation not so charged but now described as "admitted." [1] As to the "REASONS" for the dread sanction, the written decision said:

> "Your release at this time would depreciate the seriousness of your mandatory release process. It does not appear to be a reasonable probability at this time that you would conform to the conditions of mandatory release in that you failed to submit your supervision report for the month of May, 1975, failed to report change in residence to your parole officer and admitted to the panel that you left the district without permission."

Having had his long-delayed hearing, being informed of the adverse decision, but having evidently exhausted the wherewithal to continue employing counsel, petitioner filed a supplemental petition pro se, seeking to preserve his earlier grievances about the delays but concentrating now upon asserted flaws in the hearing and the decision to reincarcerate him. Certain delays caused by the court and government counsel have prolonged an extended period of confinement that is now found to be fundamentally unsupportable. Having received finally all the necessary materials for decision, and after hearing petitioner and government counsel

on November 11, 1975, the court records the reasons why the writ should and will be granted.

II.

Had there been a fair hearing, the court would probably conclude that there is sufficient evidence in the record to support the Board's finding that petitioner violated certain conditions of his mandatory release. But the hearing was grossly unfair in vital respects. Moreover, the finding of violations (relatively minor ones in this case) is only a first step. The second, and more crucial, determination is whether the violations warrant returning the parolee to prison. Due process must attend both stages of the inquiry. See, e.g., Morrissey v. Brewer, supra; Sutherland v. District of Columbia Board of Parole, 366 F. Supp. 270 (D.D.C. 1973). As will become apparent in the discussion below, the Board's procedures fell woefully shy of due process requirements at nearly every juncture.

On grounds already adumbrated in part, there is in this record a cumulation of actions by parole officials made up in excess measure of indifference, unfairness, arbitrariness, and unexplained punitiveness. At least one or two of the departures from decent procedure (perhaps most notably, the insistent reliance upon secret evidence for both the findings of violation and the designation of the harshest possible penalty) would probably

be sufficient in themselves to vitiate the decree of imprisonment against which the writ is sought. But whether that is so or not, the long course of official conduct, with its repeated instances of impropriety, compels this result. The simplest and most expeditious way to account for this conclusion is to summarize in more or less chronological order rather than supposed order of importance the offensive incidents.

1. The delay of almost three months before petitioner was given a hearing in which he had any opportunity to confront his accusers--during all of which time he remained in prison though the violations charged were surely of the least disturbing and dangerous species --was inexcusable. At the outset, nobody deigned to answer when petitioner asked that his parole officer appear at his preliminary interview and for a local revocation hearing in Mississippi. While some eight long weeks passed and he pressed repeatedly to be heard, nobody explained the delay or bothered to say when the hearing might happen. Finally, on August 21, 1975, he was sent a letter saying he would have a hearing over a month later. Long after that hearing had finally been held, the court and petitioner were given this account by the Northeast Regional Director as supposed justification for the delay:

> "* * * Mr. Carson arrived at the New York Metropolitan Detention Center on August 15, 1975. The Northeast Region learned of his presence at that facility on August 20, 1975, through a teletype sent by the U.S. Marshal for the Southern District of New York. Although, as mentioned above, hearings were conducted at the Metropolitan Detention Center on August 27, 1975, Mr. Carson's case was not scheduled for that time. Due to his recent arrival in New York, and the late notification by the U.S. Marshal, Mr. Carson was informed by Mr. John F. Sicoli, Senior Analyst, by letter, dated August 21, 1975, that his case would be heard on September 24, 1975, the next occassion[sic] that an examiner panel would conduct hearings at the Metropolitan Detention Center. This was done to permit Mr. Carson sufficient time to prepare for the revocation hearing by securing the assistance of counsel and requesting the attendance of both adverse and voluntary witnesses to testify regarding the alleged violations." [2]

That is not an impressive, or even an excessively candid, explanation. The Board of Parole knows that we impose, even upon the States under the due process clause, a duty to hold a prompt preliminary hearing, with an opportunity to question persons who have given adverse information, to determine whether there is probable cause to believe that the parolee violated any of the conditions of his parole. Morrissey v. Brewer, 408 U.S. 471, 485-87 (1972). If probable cause is determined to exist, the Board must then hold a more formal hearing -- again as promptly as possible -- to determine whether the parolee's conditional freedom must be ended. Id. at 487-89.

Petitioner's preliminary "hearing" was held on July 15, 1975, before a probation officer in Mississippi. Petitioner's request to have his New York parole officer appear for questioning in his presence, as required by Morrissey, was apparently ignored, or in any event denied without explanation. Both before and after his preliminary interview, petitioner repeatedly asked that his formal revocation hearing be held in Mississippi. Instead, for undisclosed reasons of its own, the Board of Parole decided to ship petitioner back to New York, with intermediate sojourns at several local and federal jails. When he finally arrived in New York on August 14, 1975, petitioner was held in the Manhattan Correctional Center. His revocation hearing was not held until September 24, 1975.

The delays between (1) preliminary interview and arrival in New York and (2) his arrival here and the revocation hearing, were unreasonable. The latter delay is not made less objectionable by the solicitous observation that the period of over a month after August 21 was "to permit Mr. Carson sufficient time to prepare * * *."

We may assume, arguendo, that the unjustified delay would now be of no help to petitioner if this were a case in which finally "a fair hearing [was] held which in all other respects [satisfied] the requirements of the statute." United States ex rel. Buono

v. Kenton, 287 F.2d 534, 536 (2d Cir. 1961), and the Constitution. But this is not such a case. As we turn to other defects in the proceedings, the unwarranted delay serves at least to set the scene. It is a bad scene; it does not improve as it is traced further.[3]

2. It was conceded in oral argument, and it is clear from the record before us in any event, that the hearing examiners relied upon undisclosed evidence in deciding that petitioner's parole should be invoked. This was, in the circumstances of this case, a denial of due process. Morrissey v. Brewer, supra.

The petitioner had a right under Morrissey to "disclosure * * * of evidence against him * * *." Id. at 489. He had "the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically [found] good cause for not allowing confrontation * * *." Id. These rights were plainly violated. We have been invited to inspect in camera the reports of informants and other adverse documents withheld from petitioner at the hearing. These papers are filled with patently hurtful evidence that must be supposed to underlie the opaque decision (see infra) that petitioner should suffer recommitment. In asking the court to say now that the nondisclosures were justified, the Government slips into at least two errors. First, if it were for us to say, we perceive no evident justification

for the secrecy. Second, and more important, it was for the hearing officers to declare in the first instance whether and why they believed there was "good cause" for the concealment. This was not done. In addition to the sufficient authority of Morrissey for invalidating what was done here, see Birzon v. King, 469 F.2d 1241, 1243-45 (2d Cir. 1972).

3. The Board of Parole has itself demanded by regulation more than the petitioner was given in this case. The Board requires its hearing officers, as it should, to (1) "request the attendance of persons [at the revocation hearing] who have given statements upon which revocations may be based * * * unless the presiding hearing officer * * * finds good cause for their non-attendance" and (2) disclose "all evidence upon which the finding of violation may be based." 28 C.F.R. §§ 2.56(d) and (e). It is perfectly clear from the withheld documents that the regulations were not obeyed. Some obviously adverse and material documents were relied upon by the hearing examiners in reaching their decision; others, equally adverse and material, may have been relied upon. None of the documents was given to the petitioner. None of the informants supplying the evidence embodied in the documents was produced for cross-examination. No reason was given for their

absence. What little substance from a few of the documents was revealed to petitioner at the hearing did not give him enough facts to permit a meaningful rebuttal.[4]

If there were not far more, it would be a fatal violation of due process that the hearing officers departed in material respects from the agency's own regulations. See, e.g., Service v. Dulles, 354 U.S. 363 (1957); United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954); United States ex rel. Donham v. Resor, 436 F. 2d 751, 754 (2d Cir. 1971).

4. The hearing on the alleged violations fell below any tolerable level of disorder. The solemn decision to terminate a parolee's liberty "calls for some orderly process, however informal." Morrissey, supra at 482. At the point just cited and elsewhere, the Morrissey opinion made clear that informality is a permissible trait of the revocation hearing process. See id. at 484, 485. But the "informal hearing" must, of course, be "structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee's behavior." Id. at 484. There is a level of disorganization, of unguided conversation, and of uncontrolled irrelevancy at which informality becomes prejudicial confusion. The hearing in this case fell repeatedly and inexcusably to that level.

Exuberantly stressing the virtue of informality, the hearing officer in charge allowed much of the hearing to range far beyond the two alleged violations and into scraps of rumor, third-or fourth-hand allegations, and sinister hints all designed to suggest, without remotely proving, that petitioner was roaming about the country misbehaving and seducing others into misbehavior. The parole officer, unsworn and not competently informed, was permitted, despite objections, to give lengthy, unresponsive answers as vehicles for poisonous accusations. Ostensibly to demonstrate that petitioner had been told his travel was restricted to a 75-mile radius, the parole officer said:

> "We had a reason for, we had an intelligible reason for restricting his travel. When he went to Bennington, Vermont he gave us names of some people, and what he wanted to do, and I had called the Chief U.S. Probation Officer there and asked him to make some discrete inquiries of the City Counsel, and he checked out the names of the associates that Mr. Carson wanted to go into business with. The attorney for the group, according to the Chief Mr. DeShea, I believe his name is, had been arrested just that week to be front men for the Mafia. It was pretty shakey this business venture, he wanted to open a topless bar, topless bars were not allowed in Vermont at that time. City Counsel would definitely not give a license, because of the associates we felt he might be lapsing into criminal behavior and the restrictions were definitely put on." [5]

Supposedly to explain how the F.B.I. came to arrest petitioner on the violator warrant at the address where he said he would be, the parole officer expanded, and was then abetted, as follows:

> "Mr. B [parole officer]: What was actually transpiring at that time was the police in Biloxi had contacted the FBI office and sent a TELEX to the FBI Office here and found out that I was the PO on the case and called me to get some information on the case to get some information on Mr. Carson. Apparently what they were concerned about was the ads Mr. C was running in a local newspaper, a number of local newspapers concerning an ad in general looking for young men, teenagers to come to N.Y. as trainees as managers of rock and roll groups to tour the Orient. The police down there were concerned and felt there were questions with moral turpitude involved and apparently they were in contact with the FBI Office in Miss. The agent who contacted me up here was Ed Ansen * * *
>
> "Q [hearing officer]: That would be your first knowledge as to where he was
>
> "Mr. R [attorney for petitioner]: Can I say an objection to this as being totally immaterial and irrelevant to the issue.
>
> "Q: What we are inquiring is if he was in Biloxi. I'll ask Mr. C did he put ads in the paper? looking for people to work in the business
>
> "Mr.C [petitioner]: Definitely, but not for teenagers asmoral turpitude oriented.
>
> "Mr. Q: I'm sure Mr. C you didn't advertise that in the paper about moral turpitude."

In case this irrelevancy might have been lost upon anyone, the parole officer volunteered at a later point:

"I might add also that the Asst. Manager of Empire Hotel was so familiar with Mr. C for the very type of allegation by the police in Biloxi and FBI in Miss. which was that the switchboard was constantly busy at the Hotel Empire in response to adds placed in the Village Voice, 4 people to tour the orient as managers of rock and roll bands and well after he had left the hotel people were still coming by."

When the parole officer lapsed into bizarre ruminations as to whether there were "pending charges" against petitioner, and when counsel had the temerity to respond with sounds a lawyer might make, the hearing officer hardened. His tone is discernible in the cold (and slightly garbled) transcript, but more vivid on the cassette tape. The typed approximation may serve as the last of our illustrative quotations:

" Mr. T.: Mr. Berger, do you have any information as to pending charges anywhere?

" Mr. B.: As to the charges in Rexdale, Ontario--what I have is a letter which I believe I forwarded to the Parole Board and kept a photo-copy for myself from one of the accountants at the Holiday Inns in Rexdale, Ontario, the Accounts Receivable section where they sent us a copy of the bill, the hotel room, the charge card....

" Mr. R.: I'm going to object to that. Now you asked him a specific question. You asked him if any charges were pending. He's telling you about a complaint letter from an accountant. Now if Mr. Berger doesn't speak English perhaps we ought to put it to him in some other language. That's the <u>third</u> time he's done that. I think it's disgraceful.

" Mr. T.: Are there any specific charges pending anywhere?

"Mr. B.: What she said was that she had contacted the Royal Canadian Mounted Police as the...

"Mr. R.: Well, that's not a charge, either. I'm going to object to that. I'm going to ask you to redirect your question and see if Mr. Berger can get it right this time.

"Mr. Q.: Well, Mr. Rubin, let me just tell you something. You know, over here, we're just trying to find the facts. We can inquire into any area that we want. Mr. Carson can admit or deny anything that he wants.

"Mr. R.: I understand that.

"Mr. Q.: But I wish you would not try to restrict Mr. Berger from answering in the best way he thinks he can handle it. We will decide whether he....

"Mr. R.: Sir, we all have to use the same language if we're going to communicate. If you use the word charges and he answers with a letter of complaint....

"Mr. Q.: The question was any charges filed; Mr. Berger is explaining the charges filed.

"Mr. R.: No, he wasn't. He was misusing the word charges. He knows that accountants don't make charges through the mail.

"Mr. Q.: Your information is, Mister, that there could be charges....

"Mr. B.: That she, that the Holiday Inns had turned the matter over to the Royal Canadian Mounted Police, and as the presentence investigation of the records show, he still owes time to the Canadian jail there, so there <u>has</u> to be charges up there even though....

"Mr. Q.: Nothing has been filed in your office of some official....

"Mr. B.: I also received a letter from Mr. Herisko in Massachusetts. He claimed in his letter that----

"Mr. R.: I'm going to object to anything that Mr. Herisko may have said. I think----

"Mr. Q.: Your objection's a note of Counsel. Go ahead, Mr. Berger.

"Mr. B.: He had represented Mr. Carson in a civil matter. And what happened is that he received a five hundred dollar check in payment for services rendered which were double endorsed, and the check was ultimately determined to be stolen from a company, and that he turned the matter over to Cambridge police. I talked to Detective Morrison in Cambridge, who said he was reluctant to file a criminal complaint because his department would not give him money to extradite and he did not call on such a charge. But at my last contact he was in the process of filing a criminal complaint.

"Mr. Q.: So there could be pending charges?

"Mr. B.: And finally on Monday Mr. Lester Battles came to my office, postal inspector in the Southern District of New York, concerning an investigation of money orders which I think were documented at the time of the preliminary parole hearing in Mississippi by the Chief Probation Officer. I think there were three or four of them and they were tryingto determine Mr. Carson's role in these money orders which were determined stolen from a Boston post office----

"Mr. Q.: This would be an investigative stage?

"Mr. B.: Yes."

Enough has been quoted, it is believed, to convey the atmosphere of slovenliness and disarray in which petitioner was invited to defend against being returned to prison. Hearing officers can and must do better. If the administrative hearing room need not resemble a courtroom, it may not become a shambles.

5. Another of the basic decencies assured by Morrissey, a familiar device for promoting rational decisions, is the requirement that there be "a written statement by the factfinders as to the evidence relied on and reasons for revoking parole." 408 U.S. at 489. The court has

quoted the formal agency jargon that is urged to satisfy this command in this case. That cannot be sustained. See, e.g., O'Brien v. Henderson, 368 F. Supp. 6, 9-10 (N.D. Ga. 1973); Zizzo v. United States, 470 F.2d 105, 108 (7th Cir. 1972). Re-imprisonment is by no means the automatic or most frequent consequence of a parole violation. It is a terrible sanction, meant for the serious case. Id. at 479. If routine phrases, merely echoing the generalities of regulations, may be thought to be "reasons" for the given choice, then the notion of parole board expertise is indeed a sardonic myth.

This is a most vivid case to make the point. The petitioner's violations, discounting the untested gossip and hearsay, were scarcely momentous. The underlying crime for which he first went to prison, though surely not to be condoned, is not among the most terrifying. The supposed reasons why he cannot be trusted to try to be a decent citizen are by no means patent on the record. For the sake of our professed interest in his rehabilitation, and in respect for the law of the land, the parole officials owe some intelligible and discriminating account of why in fact they have concluded to impose the grave punishment they say is needful.

III.

When it appeared at oral argument that this case might not be judged a triumph of fairness and that the writ might well issue, as it now will, government counsel requested a 30-day stay while the Solicitor General considers an appeal. The court is aware of, and sympathetic to, the needs of orderly government litigation. Nevertheless, considering that petitioner has been held for over four months already, that nobody suggests he is dangerous, that the treatment he has received was shameful, and that his sentence, at its cruelest maximum, appears to have less than a year to go, the request for 30 days of further imprisonment on the ground stated seems unconscionable. Just as the court is constantly asked to make analogous judgments at the Government's behest, see 18 U.S.C. § 3148, the court is led to observe that an appeal in the circumstances of this case would appear to be unsubstantial. Being of this view, but deferring to our appellate superiors, the court will stay its writ for five days to allow time for application to the Court of Appeals or a Judge thereof. If there is no stay by the morning of November 19, 1975, petitioner must be released.

To put the determination precisely, the petition is granted and petitioner will be released before

11 a.m. on November 19, 1975.

It is so ordered.

MARVIN E. FRANKEL

Dated, New York, New York

November 14, 1975

U.S.D.J.

FOOTNOTES: A 27

1. The "Notice of Action," in its full statement on this first aspect, said:

> "Revoke mandatory release.
> REASONS:
> Violation Charge #1: Failure to submit supervision reports. Basis: You failed to submit supervision reports as reported by your parole officer in his letter dated June 25, 1975. Violation Charge #2: Failure to report change of residence. Basis: You failed to report your change of residence as reported in Mr. Berger's letter of June 25, 1975. Other admitted charges: Leaving the district without permission. Basis: You admitted to the panel at the time of the hearing that you had gone to Canada, and had not received the permission of your parole officer to travel to that country."

The last portion, "Other admitted charges," did not relate to any "charges" in any pertinent sense. See text of violator warrant quoted earlier.

2. Affidavit of Curtis C Crawford sworn October 28, 1975, pp. 4-5.

3. The delay is also important in disposing of the Government's complaint that petitioner failed to exhaust his right of appeal to the Regional Director of the Parole Board. 28 C.F.R. §2.25. It is significant, to begin with, that this habeas proceeding began as an attack upon the undue delay while that delay was happening. "The proper time to object to an unreasonable delay in granting a hearing is during that unreasonable delay." United States ex rel. Buono v. Kenton, supra at 536. The court respected the administrative process, possibly to excess, by staying its hand while the revocation hearing went forward far more tardily than it should have. Where, as is now found, the long wait brought forth a proceeding that violates minimum standards of the Constitution and the agency's own regulations, and where the time for an agency appeal has passed during the pendency of the court's proceeding, it would be a blind and rigid application of the exhaustion doctrine to make it a barrier to relief now. Cf. McKart v. United States, 395 U.S. 185, 196-197 (1969).

4. A Board regulation permits the hearing examiners to "disclose documentary evidence by reading or summarizing the appropriate document for the alleged violator." 28 C.F.R. § 2.56(e). It may well be questioned whether less than full disclosure is sufficient under either the due process clause or the rules the courts must enforce in exercising supervisory power over the administration of federal criminal justice. Be that as it may, it is clear that no meaningful summary was given of any of the documents, and the material in most of the documents was not disclosed at all.

5. The hearing was recorded on cassette tapes, to which the court has listened. The above quotation is from a typewritten transcript, also submitted by the Government. The transcript is frequently inaccurate, incomplete, and orthographically informal. It is accurate enough, however, to be employed as it is herein. The tedium of correcting it would not be rewarded by commensurate improvements in clarity of what the court is deciding or of the reasons therefor. The court is also omitting the liberal sprinkling of "sics" that refined scholarship might dictate.

A 29

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA, ex rel. BIRCHEL LEONARD CARSON,

Petitioner,

-against-

LARRY TAYLOR, Warden, Metropolitan Correctional Center, et al.,

Respondents,

- - - - - - - - - - - - - - - - - - - - - - x

PRO SE 75 Civ. 4398

SUPPLEMENTAL MEMORANDUM

FILED
U.S. DISTRICT COURT
DEC 4 2 20 PM '75
S.D. OF N.Y.

#43389

FRANKEL, D.J.

The court's opinion dated November 14, 1975, is amended as follows: At lines 15 and 16, page 2, the portion reading "18 U.S.C. §§ 2314 and 2371 (interstate transportation of forged securities)," is changed to read "18 U.S.C. §§ 371 and 2314 (conspiracy and interstate transportation of forged securities)."

It is so ordered.

Dated, New York, New York
December 4, 1975

Marvin E. Frankel
U.S.D.J.

DEC 4 1975

14

A 30

FILED
U.S. DISTRICT COURT
SEP 8 11 50 AM '75
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

In the Matter of the Application

X

of

BIRCHEL LEONARD CARSON : PETITION FOR WRIT OF HABEAS CORPUS BY PETITIONER IN FEDERAL CUSTODY
Petitioner

-against- :

LARRY TAYLOR, WARDEN, Metropolitan Correction Center and John T. Connally,: Chief Probation Officer, Southern District of New York.
Respondents. X

75 CIV. 4398

JUDGE FRANKEL

---

STATE OF NEW YORK )
COUNTY OF NEW YORK ) SS.:

To the Honorable Presiding Judge of the United States District Court for the Southern District of New York Part

1. This petition is made by BIRCHEL LEONARD CARSON, who is at present detained by the office of Probation and Parole and is in the custody of the Metropolitan Correctional Center

2. That Petitioner was on 5/18/72, convicted of violation of Title 18, §2314 and 2371 by a jury after trial and that this conviction was affirmed by the Circuit Court of Appeals. Your petitioner was represented by counsel one Howard Jacobs Esq. of 401 Broadway, New York City. Petitioner was subsequently on 6/16/72 sentenced to a term of five years by the Honorable Sylvester Ryan, a federal District Court Judge of the Southern District of New York.

3. That petitioner's incarceration is allegedly based upon

(1)

a warrant for violation of his parole dated July 1st, 1975 as follows:

A. Failure to submit a supervision report.

B. Failure to report change in residence.

4. That petitioner has been so incarcerated since July 3rd 1975 and has not been given a hearing as to these alleged violations although numerous and continuous requests for a hearing were made by petitioner from July 3rd, 1975 to the present time.

5. That petitioner did by letter dated May 29th 1975 submit a supervision report and by said letter also reported both his change of residence and his whereabouts in Beloxi Mississippi in connection with his employment and business. That in fact petitioner was arrested on July 3rd at the very same address he gave his probation officer in this May 29th letter. A parole revocation hearing has in fact been scheduled for September 24th 1975, petitioners prior requests for such a hearing in July and in August in New York were ignored although hearings were held during those months.

6. That no previous application for the relief sought herein has heretofore been made.

WHEREFORE, petitioner respectfully prays for an order granting his petition for a writ of habeas corpus and further that your petitioner be released from incarceration pending his parole violation hearing and for such other and further relief as to this Court seems just and proper.

Birchel Leonard Carson
BIRCHEL LEONARD CARSON

LEONARD RUBIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-33[illegible]
Qualified in New York County
Commission Expires March 30, 1977

Leonard Rubin

A 32

75 CIV. 4398

JUDGE FRANKEL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Application of

BIRCHEL LEONARD CARSON
Petitioner,

-against-

LARRY TAYLOR, WARDEN, Metropolitan Correction Center and John T. Connally, Chief Probation Officer, Southern District of New York

Respondents.

ORDER TO SHOW CAUSE

Upon the annexed duly verified petition of BIRCHEL LEONARD CARSON and on all the pleadings and proceedings heretofore had herein it is

ORDERED that the respondents herein and or their agents, servants or employees or whosoever may have custody of the body of BIRCHEL LEONARD CARSON, show cause before this Court at the United States Courthouse at Foley Square, City, County and State of New York on the ____ day of September, 1975 at 10:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, IN ROOM ____ why a writ of habeas corpus should not be issued directing that the body of BIRCHEL LEONARD CARSON be produced to consider all those things concerning the said BIRCHEL LEONARD CARSON and why said prisoner

Sept. 8, 1975
Mr. Rubin states that the ground of this application is the delay of a hearing. But the hearing is now scheduled. If that scheduled is changed, this application may be renewed or shall notice.
U.S.D.J.
Marvin E. Frankel

S. D. OF N. Y. FILED SEP 9 1975 U.S. DISTRICT COURT

MICROFILM

should not have such other and further relief as to this Court may seem just and proper and it is

FURTHER ORDERED that personal service of a copy of this order together with the accompanying petition if made upon the aforementioned respondents on or before the ____ day of September, 1975, by ____ shall be due and sufficient service and it is

FURTHER ORDERED that the respondents herein shall keep and maintain custody of the petitioner BIRCHEL LEONARD CARSON until the within matter is disposed of.

Dated: September 8, 1975

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 CIV. 4378 MP

In the Matter of the Application

of

BIRCHEL LEONARD CARSON
Petitioner

-against-

LARRY TAYLOR, WARDEN, Metropolitan Correction Center and John T. Connally, Chief Probation Officer, Southern District of New York.
Respondents.

PETITION FOR WRIT OF HABEAS CORPUS BY PETITIONER IN FEDERAL CUSTODY

FILED
U.S.D.C.
SEPTEMBER 8, 1975
S.D.N.Y.

STATE OF NEW YORK )
COUNTY OF NEW YORK ) SS.:

To the Honorable Presiding Judge of the United States District Court for the Southern District of New York Part

1. This petition is made by BIRCHEL LEONARD CARSON, who is at present detained by the office of Probation and Parole and is in the custody of the Metropolitan Correctional Center

2. That Petitioner was on 5/18/72, convicted of violation of Title 18, §2314 and 2371 by a jury after trial and that this conviction was affirmed by the Circuit Court of Appeals. Your petitioner was represented by counsel one Howard Jacobs Esq. of 401 Broadway, New York City. Petitioner was subsequently on 6/16/72 sentenced to a term of five years by the Honorable Sylvester Ryan, a federal District Court Judge of the Southern District of New York.

3. That petitioner's incarceration is allegedly based upon

a warrant for violation of his parole dated July 1st, 1975 as follows:

A. Failure to submit a supervision report.

B. Failure to report change in residence.

4. That petitioner has been so incarcerated since July 3rd 1975 and has not been given a hearing as to these alleged violations although numerous and continuous requests for a hearing were made by petitioner from July 3rd, 1975 to the present time.

5. That petitioner did by letter dated May 29th 1975 submit a supervision report and by said letter also reported both his change of residence and his whereabouts in Beloxi Mississippi in connection with his employment and business. That in fact petitioner was arrested on July 3rd at the very same address he gave his probation officer in this May 29th letter. A parole revocation hearing has in fact been scheduled for September 24th 1975, petitioners prior requests for such a hearing in July and in August in New York were ignored although hearings were held during those months.

6. That no previous application for the relief sought herein has heretofore been made.

WHEREFORE, petitioner respectfully prays for an order granting his petition for a writ of habeas corpus and further that your petitioner be released from incarceration pending his parole violation hearing and for such other and further relief as to this Court seems just and proper.

Birchel Leonard Carson

BIRCHEL LEONARD CARSON

LEONARD RUBIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-[illegible]
Qualified in [illegible]
Commission expires March 30, 1977

Leonard Rubin

75 Civ. 4398 (MEF)

U.S. DISTRICT COURT
FILED
OCT 3 1975
S.D. OF N.Y.

(3)

September 25, 1975

A 36

Honorable Marvin Frankel
U. S. District Court Judge
Southern District of New York
New York, N. Y. 10007

RE: CARSON, BIRCHEL
(WRIT OF HABEAS CORPUS ORIGINALLY
HEARD ON SEPTEMBER 8, 1975.)

Dear Judge Frankel:

On September 8, 1975 a Petition for Writ of Habeas Corpus was presented to you by my then attorney Mr. Leonard Rubin, 299 Broadway, New York, N. Y. 10007. (A copy of that Petition is enclosed.) As you may recall, the Petition stated that I had been in custody for well over sixty days at that time without having been afforded a formal parole revocation hearing. I was told by my lawyer that you had stated that I should wait the intervening sixteen days between September 8 and September 24 (the respective dates upon which you heard the Petition and upon which the parole revocation hearing was held.)

The local parole revocation hearing was held yesterday (September 24) here at the Metropolitan Correctional Center adjacent to the U. S. Courthouse. I was represented at that hearing by Mr. Rubin, who has since removed himself from my employ. I also had two voluntary witnesses present to testify to mitigating evidence regarding the alleged violations. (Mr. J. Pat Gill, 903 Caillavet Street, Biloxi, Miss. and Mr. Luis Sanchez, 61-04 218th Street, Bayside Queens, N. Y.) The examiners who conducted the hearing for the U. S. Board of Parole were Mr. Quick and Mr. Tanner. Also present was one of my former parole officers from the Southern District of New York, Mr. Roger H. Berger.

The facts as to what happened at the hearing yesterday are as follows:

1. The two charges for which I had been held and which alone constituted the bases for the attempted revocation of my parole were:

   a. Alleged failure to file a monthly supervision report, and;

   b. Alleged failure to advise my parole officer of a change in address.

2. Mr. Berger (my parole officer who instituted the violation warrant) was permitted, and indeed encouraged by Mr. Quick, to present vast amounts of prejudicial extraneous and irrelevant information which had no direct or even indirect bearing upon the two charged violations. Listed below are some of the more blatant and outrageous statements that Mr. Berger was permitted to make (over the repeated and sometimes strenuous objections of my attorney), and which became an integral part of both the official record and, of necessity, the examiners' decision.

   a. Mr. Berger referred to an ad which I had run in the Village Voice inviting rock and roll bands to apply for auditions for potential jobs which I both had available in various cities in the United States or which could be developed in certain cities of which I had knowledge of club owners and facilities. Mr. Berger admitted that he had never seen the ad but that he had been told by an FBI agent (unnamed) that the purpose of this ad was to engage musicians in acts of moral turpitude. This was not only an inexcusable lie, but it did little to enhance my image before the parole examiners.

   b. Mr. Berger alluded to a check that I had allegedly written to a hotel in Canada (he never mentioned the city) and he said that the matter had been referred to the Canadian Royal Mounted Police. He had no documentation for this allegation and no warrant has issued or detainer been lodged against me here at the Metropolitan Correctional Center for this alleged offense.

   c. Mr. Berger admitted that he had received mail addressed to me from the management of the Hotel Empire 44 West 63rd Street, New York, N. Y. 10023, which was my residence, and that it was from this mail that he was allegedly able to ascertain some of his unsubstantiated allegations about my activities. Naturally, my concern here is two-fold: 1) If I was still a resident of the hotel at the time, why wasn't the mail given to me; and 2) If I was no longer a resident of the hotel at the time of Mr. Berger's confiscation of my mail, (which implication was strongly made at the hearing), why hadn't it been returned to sender with the appropriate notation that I was no longer living at that address or with the appropriate forwarding address noted on it. (Upon leaving the hotel I filled out a mail forwarding card with my new address on it.)

   d. Mr. Berger admitted that he had personally followed me secretly around New York City one day for the better part of the day to observe my actions.

(3)

BEST COPY AVAILABLE

e. Mr. Berger made reference to an alleged pending investigation by the U. S. Postal Service regarding some stolen postal money orders. I have not been visited by any postal inspectors and know nothing about this charge. No warrant has been issued nor any detainer lodged against me here regarding this matter.

f. Mr. Berger referred to an event which occurred while I was under his supervision relating to an attempt on my part to obtain a salaried job as a bar manager in Bennington, Vt. I had received Mr. Berger-'s verbal permission to go out of town for this job interview. After checking the entire situation out and speaking with the principals in the matter, I decided that I didn't wish to either become involved in their operat-ion or to work for them. I returned to New York and at my next scheduled meeting with Mr. Berger I told him of my decision.

However, at the parole hearing, Mr. Berger stated the fact that the owners of the bar had Mafia connections (and by implication that I did also) and that they were of a very shady nature indeed. Since I had not accepted the job offer, and was not aware of any such evil personalities being involved, I cannot see how their mention was relevant to my parole hearing.

g. Allegations concerning alleged check prosecutions from Massachusetts were made by Mr. Berger. Again, there was no warrant nor has any detainer been lodged against me here for the alleged violation, and no documentation of such charges was presented by Mr. Berger.

h. Mr. Berger stated that my monthly supervision reports mailed from his office to me at t-he Hotel Empire for the months of May and June (the months involved in the alleged violation charge) were returned to his office marked "not living at this address". These returned envelopes were presented in evidence by Mr. Berger. Upon examination by all present, it was ascertained that they had been address to "Bradley R. Thompson, 44 West 63rd Street, New York, N. Y. 10023." Since my true name is Birchel L. Carson, and since I was registered and living under my true name, and since no one at the hotel was aware that I had ever used that name in the past (prior to my conviction and incarceration in 1971-72, it is only a logical turn of events that these envelopes would be retunned with such a notation. (It was apparently upon these returned envelopes that Mr. Berger based his allegation that I had both failed to file a report and failed to advise him of a change in address.) When cross-examined by my attorney about this glaring error, Mr. Berger said "Well, I guess you've got me on that one".

3. Further, I had requested under the provisions of the Freedom of Information Act that many documents substantiating my employment and which would have proved my innocence of Mr. Berger's charges, be provided to me for this parole revocation hearing. Both my letters in this regard as well as those of my attorney were unanswered. My witnesses were only permitted to give testimony relating directly to the two charges on the warrant while Mr. Berger was permitted to cover a broad range of rumors, unsubstantiated allegations, innuendo and fantasies. Mitigtaing documentary evidence relating to my reasons for being in Mississippi were reluctantly perused but not admitted into evidence at the hearing.

Judge Frankel, I am not learned in the law, but I do feel that the parole hearing that was conducted in my case yesterday violates not only the spirit but also the letter of the law. I am familiar with the recent Supreme Court rulings in MORRISSEY et al v. BREWER et al. (408 U. S. 471) and GAGNON, WARDEN v. SCARPELLI (411 U. S. 778) which I believe govern hearings such as mine. However, to be forced to exhaust administrative remedies via the appeal apparatus set up by the Board of Parole would be an unconscionable delay in my case. I feel that t-he outrageous introduction of totally irrelevant and prejudicial material was a definite violation of what could, by any account, be considered fair and just. I think that perhaps you will agree that I was denied due process under the guidelines of the above mentioned cases as well as by any other judicial criteria.

THEREFORE, I would appreciate it if you would consider this as an amended Motion for Writ of Habeas Corpus and that you would specifically order the U. S. Board of Parole to deliver to you an authentic duplicate original of each cassette tape recorded during the hearing. (This, I was told by the examiners, constitutes the official record of the hearing.) I would further request that you- order the U. S. Bureau- of Prisons not to remove me from my current place of confinement until you have had time to both rule on this Motion and to hear the tapes mentioned above to determine if, in fact, I received a parole hearing that in all respects comports with the current laws. Please understand there was no refutation of the written or verbal evidence introduced by me relative to the two charges of parole violations about- which the hearing was concerned. To attempt to introduce new material of a prejudicial nature at the last moment is violative of my constitutional rights.

Thank you for your courtesy in this matter. I'm sorry that I'm unable to present my arguments in the normally required formal manner, but I'm hopeful that you will take into consideration that I am proceeding pro se and that my knowledge of the law is limited.

Respectfully submitted,

Birchel L. Carson

Birchel L. Carson
03870-116
Metropolitan Correctional Center
150 Park Row
New York, N. Y. 10007

I SWEAR THAT THE FACTS CONTAINED IN THIS LETTER ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND AM AWARE THAT I MAY BE SUBJECT TO PROSECUTION IF I AM KNOWINGLY TELLING A FALSEHOOD OR UNTRUE STATEMENT IN SAID LETTER.

Birchel L. Carson
BIRCHEL L. CARSON

SWORN TO AND SUBSCRIBED BEFORE ME THIS 26 DAY OF Sept., 1-975:

P. C. Vaccaro S/C

"AUTHORIZED BY THE ACT OF JULY 7, 1955 TO ADMINISTER OATHS (18 U.S.C. 4004)".

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel. BIRCHEL LEONARD CARSON,

Petitioner,

-against-

LARRY TAYLOR, Warden, Metropolitan Correction Center and John T. Connally, Chief Probation Officer, Southern District of New York,

Respondents.

PRO SE 75 Civ.4398

MEMORANDUM AND ORDER

#43201

MICROFILM

FRANKEL, D.J.

On September 8, 1975, the petitioner, then represented by counsel, filed this petition for habeas corpus, claiming that he was being held unlawfully (i.e., seemingly for an unduly protracted period) pending a hearing upon an alleged parole violation. His attorney, on the same date, attempted to bring on the petition by order to show cause. When it appeared, however, that the allegedly delayed hearing was about to be held, I withheld signature on the order to show cause, endorsing this explanation on the paper.

On September 26, 1975, the petitioner, now proceeding pro se, executed a document which he desired and desires to have treated as an "Amended Motion for Writ of Habeas Corpus. . . ." Being initially of the view that this should be treated as a new proceeding, I referred it to our Pro Se Clerk on September 30, 1975. On October 1, 1975, the petitioner wrote and reminded me of the prior proceedings, urging in effect that the writ is properly to be handled by me. Considering that submisssion, I concluded that the petitioner is correct in this respect and I directed his latest paper to be filed in the original proceeding as above-captioned.

It now appears that the parole revocation hearing has been held, and that the original ground of complaint has changed. There remains, nevertheless, a disturbing picture of delay, including incarceration, while the Parole Board determines whether it should rightfully be depriving this petitioner of his freedom. It may be hoped that many or all of the grievances petitioner alleges will be resolved by a fair and expeditious determination in the parole revocation proceeding.

However that may be, the petitioner is now entitled to prompt consideration of the petition lodged with this court. In that view, the respondents are directed to answer the petition not later than October 14, 1975. Thereafter, petitioner will have until October 17, 1975, for any reply he deems necessary. In the meantime, the petitioner is to be held in his present place of custody (unless, of course, he is sooner released) pending further orders of this court.

It is so ordered.

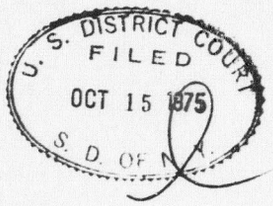
Dated, New York, New York
October 3, 1975

Marvin E. Frankel
U.S.D.J.

AL:emw
d-194

A 42

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK




| | | |
|---|---|---|
| In the Matter of the Application of BIRCHEL LEONARD CARSON, Petitioner, against LARRY TAYLOR, Metropolitan Correction Center and JOHN T. CONNALLY, Chief Probation Officer, Southern District of New York. | : | AFFIDAVIT<br>75 Civ. 4398 (MF) |

ROGER H. BERGER, deposes and says:

1. I am the United States Probation Officer assigned to the case of Birchel Leonard Carson, a/k/a Bradley Robert Thompson, and as such am fully familiar with the facts of this case.

2. Petitioner Carson was convicted on May 18, 1972 for violation of Title 18, §§ 2314 and 2371 which conviction was affirmed by the Court of Appeals for the Second Circuit.

3. Petitioner was thereafter sentenced on June 16, 1972 to a term of five years on each of Counts 1 -- 6 in the indictment to run concurrently with each other, but consecutively to and to commence upon expiration of confinement defendant was serving at U. S. Penitentiary in Lewisburg, Pennsylvania.

4. Petitioner was thereafter released pursuant to Certificate of Mandatory Release dated January 30, 1975.

5. Upon information and belief pursuant to petitioner's release, petitioner submitted and secured approval for a residence and employment plan which stated residence of the Hotel Empire, 44 W. 63rd Street and employment at the Creative Talent Artists, 188 Garden Street, Lawrence, Massachusetts.

(6)

AL:emw
d-194



6. Upon information and belief in accordance with the employment plan, petitioner stated that he would not leave the district of New York without the U. S. Probation Officer's permission.

7. On July 2, 1975, a warrant was issued by the United States Board of Parole directing the United States Marshal of the Southern District of New York to take custody of petitioner Carson for alleged violations of the conditions of his Mandatory Release.

8. Upon information and belief on July 3, 1975, petitioner Carson was arrested in Biloxi, Mississippi by Special Agents of the Federal Bureau of Investigation and local policemen and was incarcerated in the County Jail.

9. Upon information and belief on July 15, 1975 pursuant to the rules and regulations of the United States Board of Parole, the petitioner was granted a preliminary revocation hearing by Gerald W. Brown, Chief U.S. Probation Officer of Gulf Port, Mississippi. Petitioner was represented by Gerald Emile, Esq. at the hearing.

10. Upon information and belief during the course of the preliminary revocation hearing, the petitioner denied the allegations set forth in the warrant and accordingly, was entitled to a full hearing in the Southern District of New York.

11. On July 28, 1975, John F. Sicoli, Senior Analyst for U. S. Board of Parole, Northeast Regional Office wired by telegram the United States Marshal's Office in Jackson, Mississippi authorizing the transfer of Petitioner Carson to the United States Marshal for the Southern District of New York for the conduct of the petitioner's hearing in this district.

JSS:emw



12. Upon information and belief on or about August 15, 1975 petitioner Carson was lodged at the Metropolitan Correction Center, New York, New York.

13. On August 21, 1975, John F. Sicoli, Senior Analyst for the U. S. Board of Parole wired by telegram your deponent the United States Probation Officer, to notify the United States Probation Office of petitioner's hearing scheduled for September 24, 1975 at 9:00 A.M. in the Metropolitan Correction Center.

14. Upon information and belief on September 24, 1975 a hearing was held by Messrs. Quick and Tanner of the United States Board of Parole at the Metropolitan Correction Center on the alleged violations of the Mandatory Release program.

15. At the hearing the petitioner was represented by an attorney and presented witnesses.

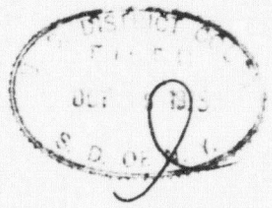
16. On or about October 7, 1975 your deponent was informed by letter by Chief Examiner Pokinski, United States Board of Parole, that petitioner's parole had been revoked and that he would be held for the maximum expiration of his sentence.

Roger H. Berger
ROGER H. BERGER

Sworn to before me this
15th day of October, 1975.

Jeanette Ann Grayeb

JEANETTE ANN GRAYEB
Notary Public, State of New York
No. 24-[illegible]
Qualified in Kings County
Commission Expires March 30, 1977



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

In the Matter of the Application :

of :

BIRCHEL LEONARD CARSON :

Petitioner, :

-against- : AFFIDAVIT

LARRY TAYLOR, Metropolitan Correction Center and JOHN T. CONNALLY, Chief Probation Officer, Southern District of New York. : 75 Civ. 4398 (MP)

:

----------x

STATE OF NEW YORK )
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK )

ALAN LEVINE, deposes and says:

1. I am an Assistant United States Attorney and am familiar with the facts of this case.

2. This affidavit is submitted in response to the Writ of Habeas Corpus filed by the petitioner on September 8, 1975.

3. Accompanying this affidavit is the affidavit of Roger H. Berger, United States Probation Officer in charge of the case of petitioner Birchel Carson, which sets forth in detail the dates and circumstances of petitioner Carson's incarceration.

4. Your deponent has been advised that hearings before the United States Board of Parole are held periodically by members of the Board from the Northeast Region located in Philadelphia, Pennsylvania who travel throughout the Districts in the Region. On August 25, 1975 petitioner Carson's hearing was set down for September 24, 1975 which was the next available hearing date in the Southern District Of New York.

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5. In the course of a search of the court file on the morning of October 15, 1975, your deponent noticed a letter to the Honorable Marvin Frankel, United States District Judge, dated September 25, 1975 from the petitioner and filed with the Court on October 3, 1975. Said letter purports to be an amendment to the original application for Writ of Habeas Corpus filed on September 8, 1975.

6. Inasmuch as it appears from the letter that the United States Attorney's Office was not served with and did not receive a copy of said letter and this office has no record of its receipt, the government's responding papers filed with the Court at this time are not to be construed as a response to the allegations set forth therein.

Alan Levine

ALAN LEVINE

Subscribed to before me on the
15th day of October, 1975.

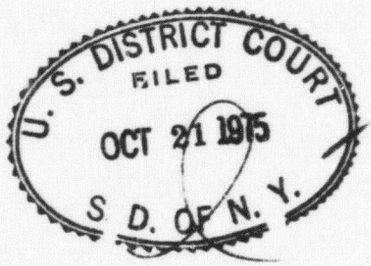
Jeanette Ann Grayeb

JEANETTE ANN GRAYEB
Notary Public, State of New York
No. 24-4741575
Qualified in Kings County
Commission Expires March 30, 1977

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK




| | | |
|---|---|---|
| In the Matter of the Application of BIRCHEL LEONARD CARSON, Petitioner, -against- LARRY TAYLOR, Metropolitan Correction Center and JOHN T. CONNOLLY, Chief Probation Officer, Southern District of New York. | : | 75 Civ. 4398 (MEF) MEMORANDUM |

FRANKEL, D.J.

On October 3, 1975, this court issued its Memorandum and Order determining (contrary to an earlier ruling) that petitioner's pro se submission of September 26, 1975, should be treated as an amended petition for a writ of habeas corpus and that the Government should respond thereto "not later than October 14, 1975." The Government submitted its affidavits in response on October 15. But the response was not addressed to the new allegations in the amended petition at all. Explaining this, the Assistant United States Attorney wrote:

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OCT 22 1975

"Inasmuch as it appears from the letter that the United States Attorney's Office was not served with and did not receive a copy of said letter and this office has no record of its receipt, the government's responding papers filed with the Court at this time are not to be construed as a response to the allegations set forth therein."

It also appears that the Assistant mentioned to a law clerk that he would make a fuller and more direct response if the court desired it.

The court does indeed desire a directly responsive presentation. And petitioner is entitled to it.

Accordingly, since the petitioner is in confinement and time is therefore important, the court this morning took (and herein records) the unusual step of speaking in person to the Assistant United States Attorney and ordering him to make a more complete answer. The response thus ordered will be filed and served personally upon petitioner by noon on October 28, 1975. Petitioner will have until October 31, 1975, for any reply he wishes to make (again to be delivered by the Marshal under arrangements heretofore established for this case). The court will then reach and consider the matter as promptly as our calendar permits.

So ordered.

Dated, New York, New York
October 21, 1975

Marvin E. Frankel
U.S.D.J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES ex rel.
BIRCHEL LEONARD CARSON,

- v -

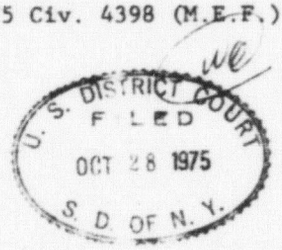
LARRY TAYLOR, Warden,
Metropolitan Correction Center
and JOHN T. CONNALLY, Chief,
Probation Officer, Southern
District of New York,

Defendants.

- - - - - - - - - - - - - - - - - - -x

SUPPLEMENTAL AFFIDAVIT

75 Civ. 4398 (M.E.F.)




STATE OF NEW YORK )
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK )

ALAN LEVINE, duly sworn, deposes and says:

1. I am an Assistant United States Attorney and am fully familiar with the facts of this case.

2. This Affidavit, Exhibits and Memorandum of Law are submitted in response to the Petition for Writ of Habeas Corpus filed September 2, 1975 and the Amended Petition for Writ of Habeas Corpus filed October 3, 1975.

3. Exhibit A appended hereto is a copy of the Notice and Decision of the Board of Parole of the petitioner's revocation hearing held on September 24, 1975. Exhibit B appended hereto is a copy of the applicable regulations of the Board of Parole, 28 C.F.R. §§2.23 - 2.57. Exhibit C to be appended hereto is a transcript of the revocation hearing prepared from tape recordings of the hearing. Exhibit D to be appended hereto is an affidavit of Mr. Curtis C. Crawford, Regional Director, Northeast Region, United States Board of Parole. Exhibit E to be appended hereto is an affidavit from a representative of the Bureau of Prisons.

4. By the Amended Petition for Writ of Habeas Corpus, petitioner claims that he was deprived of his

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constitutional rights to due process at the hearing conducted by the United States Board of Parole on September 24, 1975 in that (1) information and documents unrelated to the alleged violations of his mandatory release were presented to the hearing examiners over the objections of his counsel, Leonard Rubin, Esq.; (2) the United States Probation Officer, Mr. Roger Berger, committed improprieties in connection with the hearing, i.e. received mail addressed to the petitioner and maintained surveillance for one day of the petitioner; (3) petitioner was denied access to internal documents of the United States Probation Office; and (4) petitioner was denied the opportunity to present rebuttal testimony by his witnesses on matters unrelated to the alleged violations.

(5) With respect to the first claim, the Government's Memorandum of Law clearly shows that in the exercise of the Board's discretion it may consider other relevant facts concerning the petitioner's adjustment to the community which may include hearsay statements by the Probation Officer. Gagnon v. Scarpelli, 411 U.S. 778 (1973); Morrissey v. Brewer, 408 U.S. 471 (1972).

(6) Petitioner's second, third and fourth claims are totally without merit. The tape recording and transcript of the hearing indicate that Mr. Berger did not receive any mail addressed to the petitioner, but, rather, in inquiring of the management of Hotel Empire of the petitioner's whereabouts, the management showed Mr. Berger a cardboard box containing letters addressed to Mr. Carson,

as well as others. Mr. Berger looked at the envelopes, but neither opened, nor removed, any of the letters from the hotel.

7. Petitioner, both appearing pro se and through his counsel, has requested the following documents from the United States Probation Office: (a) any notes, memoranda, books and records relating to the alleged verbal permission to travel outside the jurisdiction; (b) any reports, letters, notes, and communiques written by or to the Probation Office which referred to the petitioner and his activities in the community; (c) copies of employment contracts verifying his employment; (d) a copy of the report sent to the Board of Parole recommending that his parole was violated. These requests were made pursuant to the Freedom of Information Act.

8. With respect to request (a), no notes and memoranda were presented to petitioner since none exist and there was no written permission to leave the jurisdiction granted. Mr. Berger did testify on the issue of verbal permission and was cross-examined by petitioner's counsel. Mr. Wilson, the prior Probation Officer, was made available to petitioner at the hearing.

9. With respect to request (b), the documents as they relate to petitioner's activities in the community were produced to the Parole Board at the hearing, but were not produced at the hearing to petitioner. Insofar as petitioner is entitled to those documents pursuant to the Freedom of Information Act, that claim is still pending before the Probation Office and Board of Parole. However, the Government submits, as stated in the Memorandum of Law, that the failure to show these documents to the petitioner

prior to the hearing does not require a new hearing inasmuch as the contents of the documents were made known to petitioner during the course of the hearing and petitioner was given full opportunity to explain his version of the circumstances and cross-examine Mr. Berger.

10. The items described in request (c) are irrelevant to the alleged violations of the conditions of mandatory release. With respect to request (d), the Government submits that the denial of access to confidential evaluations of petitioner is within the discretion of the Board of Parole and Probation Office. See Diaz v. Norton, 376 F. Supp. 112 (D.C. Conn. 1974).

11. Examination of the tape recording and transcript of the hearing clearly indicate that petitioner was not denied in any way his opportunity to rebut the statements of Mr. Berger.

12. The record also indicates that the petitioner admitted during the hearing that he had traveled to Canada and that he had not received specific permission of the Probation Officer to do so. At the conclusion of the hearing this act was considered as an additional violation of the conditions of mandatory release.

13. It has now come to the attention of the United States Attorney's Office for the Southern District of New York that representatives of the Board of Parole were present in the Southern District of New York on August 27, 1975 and held certain hearings. In affidavits of Mr. Curtis Crawford (to be marked Exhibit D) and a representative of the Bureau of Prisons (to be marked Exhibit E), the administrative circumstances surrounding the failure of petitioner

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to receive a hearing on that date will be explained. Nevertheless, as set forth in the Government's Memorandum of Law, the delay of eighty-three days was not unreasonable as a matter of law, and in any event, since petitioner received a fair hearing his custody was lawful. United States ex rel. Buono v. Kenton, 287 F.2d 534 (2d Cir.), cert. denied, 368 U.S. 846 (1961).

For all of the foregoing reasons herein and those set forth in the Government's Memorandum of Law, petitioner's Writ of Habeas Corpus should be dismissed.

Alan Levine

ALAN LEVINE
Assistant United States Attorney

Sworn to before me this
27th day of October, 1975.

ROBERT J. COSTELLO
NOTARY PUBLIC, State of New York
No. 41-4509892
Qualified in Queens County
Commission Expires March 30, 1977

A 54

Parole Form H-7(a)
(Rev. June 1974)

UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
Washington, D.C. 20537

Notice of Action

Name Birchel Leonard CARSON

Register Number 03870-116 Institution MCC New York

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

Continue to expiration.

Conditions or remarks:

REASONS:

Your release at this time would depreciate the seriousness of your mandatory release process. It does not appear to be a reasonable probability at this time that you would conform to the conditions of mandatory release in that you failed to submit your supervision report for the month of May, 1975, failed to report change in residence to your parole officer and admitted to the panel that you left the district without permission.

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

NOTE: I don't admit to any violations you have indicted him.
Rec'd 10/22/75 B. Carson

Appeals procedure. You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.

B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.

C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.

D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

October 7, 1975 (Date Notice sent)

Northeast (Region Specify)

gds (Docket Clerk)

National Appellate Board (Check)

INSTITUTION COPY

BEST COPY AVAILABLE

be held by an examiner or member of the Board, except under the Board's appeals procedures.

§ 2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority to make decisions relative to the granting or denial of parole, or reparole and revocation or reinstatement of parole or mandatory release and to fix conditions of parole.

(b) Hearing examiners shall function as two-man panels and the concurrence of both examiners shall be required for their decision. In the event of a split decision by the panel, the appropriate regional Administrative Hearing Examiner shall cast the deciding vote.

(c) When a hearing examiner panel proposes to make a decision which falls outside of explicit guidelines for parole decision-making promulgated by the Board, the case shall be reviewed by the appropriate regional Administrative Hearing Examiner. When an Administrative Hearing Examiner does not concur in a decision of an examiner panel to set a parole effective date or continuance outside the Board's guidelines he may with the concurrence of the Regional Director modify the date to the nearest limit of the guidelines.

(d) In the event the Administrative Hearing Examiner is serving as a member of a hearing examiner panel or is otherwise unavailable, cases requiring his action under paragraphs (b) and (c) of this section will be referred to another hearing examiner.

§ 2.24 Review of panel decision by the Regional Director and the National Appellate Board.

A regional Director may review the decision of any examiner panel and refer this decision, prior to written notification to the prisoner, with his recommendation and vote to the National Appellate Board for reconsideration and any action it may deem appropriate. Written notice of this reconsideration action shall be mailed or transmitted to the prisoner within fifteen working days of the date of the hearing. The Regional Director and each member of the National Appellate Board shall have one vote and decisions shall be based upon the concurrence of two out of three votes.

§ 2.25 Appeal of hearing panel decision.

(a) A prisoner may file with the responsible Regional Director a written appeal of a decision of a hearing examiner panel or a decision under § 2.24 to grant, deny or revoke parole or to revoke mandatory release. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision. The appeal shall be considered by the Regional Director who may affirm the decision, order a new institutional hearing, order a regional appellate hearing, reverse the decision, or modify a continuance or the effective date of parole. Reversal of an examiner panel decision or the modification of such a decision by more than one hundred eighty days, whether based upon the record or following a regional appellate hearing, shall require the concurrence of two out of three Regional Directors. Appellate decisions requiring a second or additional vote shall be referred to other Regional Directors on a rotating basis as established by the Chairman.

(b) Regional appellate hearings shall be held at the regional office before the Regional Director. Attorneys, relatives and other interested parties who wish to appear must submit a written request to the Regional Director stating their relationship to the prisoner and the general nature of the information they wish to present. The Regional Director shall determine if the requested appearances will be permitted. The prisoner shall not appear personally.

(c) If no appeal is filed within thirty days of entry of the original decision, this decision shall stand as the final decision of the Board.

(d) Appeals under this section may be based only upon the following grounds:

(1) The reasons given for a denial or continuance do not support the decision; or

(2) There was significant information in existence but not known at the time of the hearing.

§ 2.26 Appeal to National Appellate Board.

(a) A prisoner may file a written appeal of the Regional Director's decision under § 2.25 to the National Appellate Board on a form provided for that purpose within thirty days after the entry of the Regional Director's written decision. The National Appellate Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institutional or regional level.

(b) The bases for such appeal shall be the same as for a regional appeal as set forth in § 2.25(d). However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appellate Board.

(c) Decisions of the National Appellate Board shall be final.

§ 2.27 Appeal of original jurisdiction cases.

(a) Cases decided under the procedure specified in § 2.17 may be appealed within thirty days of the entry of the decision to the National Appellate Board. The National Appellate Board, upon the concurrence of two members, may affirm the decision or schedule the case for a review by the entire Board at its next quarterly meeting. A quorum of five members shall be required and all decisions shall be by a majority vote. The Chairman shall vote on the decision only in the absence of a member. This appellate decision shall be final.

(b) If an appellate hearing is scheduled, attorneys, relatives, or other interested parties who wish to speak for or against parole at such hearing must submit a written request to the Chairman of the Board stating their relationship to the prisoner and the general nature of the material they wish to present. The Chairman shall determine if the requested appearances will be permitted.

(c) If no appeal is filed within thirty days of the entry of the Regional Director's decision, this decision shall stand as the final decision of the Board.

(d) The bases for this appeal shall be the same as for a regional appeal as set forth in § 2.25(d).

§ 2.28 Reopening of cases.

Notwithstanding the appeal procedure of § 2.25 and § 2.26, the appropriate Regional Director may on his own motion reopen a case at any time upon the receipt of new information of substantial significance and may then schedule an institutional hearing or take any other action authorized under the provisions of § 2.25. Original jurisdiction cases may be reopened under the procedure of this section on the motion of two out of three Regional Directors and may be scheduled for an institutional hearing or for review by the Regional Directors on the record.

§ 2.29 Withheld and forfeited good time.

(a) Section 4202 of title 18 of the United States Code permits Federal prisoners to be paroled if they have observed the rules of the institution in which they are confined and if they are otherwise eligible for parole. Any forfeiture of statutory good time shall be deemed to indicate that the prisoner has violated the rules of the institution to a serious degree, and a parole will not be granted in any such case in which such a forfeiture remains effective against the prisoner concerned. Any withholding of statutory good time shall be deemed to indicate that the prisoner has engaged in some less serious breach of the rules of the institution. Nevetheless, parole will not usually be granted unless and until such good time has been restored.

(b) Neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from applying for and receiving a parole hearing.

(c) The above restrictions shall not apply, however, to the forfeiture or withholding of *extra good time* which is granted because of meritorious behavior. Parole may be ordered without regard to a prisoner's status insofar as *extra good time* is concerned, although the reasons for any forfeiture or withholding will be included among the other factors used in making the parole decision.

§ 2.30 Release; modification of release date.

(a) When an effective date has been set by the Board, release on that date shall be conditioned upon continued good conduct by the prisoner and the completion of a satisfactory plan for his supervision. The appropriate Regional Director may, on his own motion, reconsider any case prior to release and may reopen and advance or retard a parole date. If such previously granted parole date is retarded for more than sixty days because of institutional misconduct, the prisoner will be given a new hearing in accordance with § 2.12. The purpose of the hearing is to determine if the prisoner's parole grant should be rescinded or a new parole date established. Such hearings will be held on the next hearing docket at a Federal institution. If such a prisoner's misconduct occurred in a Federal Community Treatment Center or a state or local Halfway House, he shall be placed on the first hearing docket after return to a Federal institution.

(b) In any case of a prisoner who has been notified of parole and who has subsequently engaged in conduct in viola-

term or terms specified in his sentence without deductions of allowance for good time. Prisoners sentenced prior to June 29, 1932, shall receive reductions in their maximum term or terms of imprisonment for such good time allowances as may be authorized by law.

(b) The Regional Director may discharge from supervision prior to the normal expiration date as provided in § 2.46(b), but the sentence is not thus commuted and such a parolee may be reinstated to supervision or retaken on the basis of a violator warrant.

(c) For certain narcotic offenses a prisoner will have a "special parole term" imposed by the court at the time of sentencing. The period of supervision under the basic sentence is served separately and must be completed prior to the beginning of any "special parole term." The "special parole term" will not be aggregated with the basic sentence for any purpose, including computation of time to serve following parole revocation, if any.

**§ 2.44 Conditions of release.**

The conditions of release are printed on the release certificate and are binding regardless of whether the releasee signs the certificate. The Board, or a member thereof, may add special conditions or modify the conditions of release at any time.

**§ 2.45 Travel by parolees and mandatory releasees.**

(a) The probation officer may approve travel outside the district without approval of the Regional Director in the following situations:

(1) Vacation trips not to exceed thirty days,

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities,

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purposes of employment, shopping, or recreation.

(b) Specific advance approval by the Regional Director is required for other travel, including travel outside the continental limits of the United States, employment more than fifty miles outside the district, and vacations exceeding thirty days. A special condition imposed by the Regional Director prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

**§ 2.46 Supervision reports, modification and discharge from supervision.**

(a) All parolees and mandatory releasees shall make such reports to the United States Probation Officers to whom they have been assigned as may be required by the Board or Probation Officers. Probation Officers shall submit summary reviews of the progress of parolees and mandatory releasees according to Board policy. On the basis of summary reviews of the progress of parolees, the Regional Director may modify the reporting requirement of parolees or releasees.

(b) After the parolee or mandatory releasee has been under supervision for at least one year, the Regional Director may, in his discretion, permit the parolee to submit a written report to his probation officer on a less frequent basis than once a month. After a period of such reduced reporting the Regional Director may further order that the parolee be discharged from all supervision by the Probation Officer. In the latter instances, a parolee may be reinstated to supervision or a warrant may be issued for him as a violator at any time prior to the expiration of the sentence or sentences imposed by the court. Other modification in the reporting requirements may be made by the Regional Director at any time during the parolee's term.

**§ 2.47 Modification and discharge from supervision; youth offenders.**

A committed youth offender may remain under supervision until the expiration of his sentence or he may be released from supervision or unconditionally discharged at any time after one year of continuous supervision on parole.

**§ 2.48 Setting aside conviction.**

When an unconditional discharge has been granted to a youth offender prior to the expiration of his maximum term of sentence, his conviction shall be automatically set aside and the Regional Director shall issue to the youth offender a certificate to that effect.

**§ 2.49 Revocation of parole or mandatory release.**

(a) If a parolee or mandatory releasee violates any of the conditions of his release, and satisfactory evidence thereof is presented to the Board, or a member thereof, a warrant may be issued and the offender returned to an institution. Warrants shall be issued or withdrawn only by the Board, or a member thereof.

(b) A warrant for the apprehension of any parolee shall be issued only within the maximum term or terms for which the prisoner was sentenced.

(c) A warrant for the apprehension of any mandatory releasee shall be issued only within the maximum term or terms for which the prisoner was sentenced, less one hundred eighty days.

**§ 2.50 Same, youth offenders.**

In addition to issuance of a warrant on the basis of violation of any of the conditions of release, the Youth Corrections Division may, when the Division is of the opinion that such youth offender would benefit by further treatment, direct his return to custody or issue a warrant for his apprehension and return to custody. Upon his return to custody, such youth offender shall be given a revocation hearing under the same provisions as adult offenders as specified in § 2.54–§2.56. Following the revocation hearing parole may be reinstated, revoked or the terms and conditions thereof may be modified.

**§ 2.51 Unexpired term of imprisonment.**

The time a prisoner was on parole or mandatory release is not credited to the service of his sentence if revocation occurs. When a warrant is issued the sentence ceases to run, but begins to run again when the releasee is taken into Federal custody by the execution of the Board's violation warrant. However, the sentences of prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act run uninterruptedly from the date of conviction without regard to any revocation, except as provided in § 2.10(c). In no case may the commitment of a person under the Federal Juvenile Delinquency Act extend past his twenty-first birthday.

**§ 2.52 Execution of warrant; notice of alleged violations.**

(a) Any officer of any Federal correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant shall be delivered shall execute such warrant by taking such prisoner and returning him to the custody of the Attorney General. The warrant shall be considered delivered to a Federal officer when the warrant is signed and placed in the mail at the Board headquarters or regional office before the expiration of the maximum term of sentence.

(b) On arrest of the prisoner the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the alleged violations of parole or mandatory release upon which the warrant was issued.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee or mandatory releasee is to be continued under supervision by the probation officer until the normal expiration of the sentence, or until the warrant is executed, whichever comes first. Monthly supervision reports are to be submitted, and the releasee must continue to abide by all the conditions of release.

**§ 2.53 Warrant placed as a detainer and dispositional interview.**

(a) In those instances where the prisoner is serving a new sentence in an institution, the warrant may be placed there as a detainer. Such prisoner shall be advised that he may communicate with the Board relative to disposition of the warrant, and may request that it be withdrawn or executed so his violator term will run concurrently with the new sentence. Should further information be deemed necessary, the Regional Director may designate a hearing examiner panel to conduct a dispositional interview at the institution where the prisoner is confined. At such dispositional interview the prisoner may be represented by counsel of his own choice and may call witnesses in his own behalf, provided he bears their expenses. He shall be given timely notice of the dispositional interview and its procedure.

(b) Following the dispositional review the Regional Director may:

(1) Let the detainer stand

(2) Withdraw the detainer and close the case if the expiration date has passed;

(3) Withdraw the detainer and reinstate to supervision; thus permitting the federal sentence time to run uninterruptedly from the time of his original release on parole or mandatory release.

(4) Execute warrant, thus permitting the sentence to run from that point in time. If the warrant is executed, a previously conducted dispositional interview may be construed as a revocation hearing.

(c) In all cases, including those where a dispositional interview is not conducted, the Board shall conduct annual reviews relative to the disposition of the

warrant. These decisions will be made by the Regional Director. The Board shall request periodic reports from institution officials for its consideration.

§ 2.54 Revocation by the Board, preliminary interview.

(a) A prisoner who is retaken on a warrant issued by a Board Member shall be given a preliminary interview by an official designated by the Regional Director to determine if there is probable cause to hold the prisoner for a revocation hearing and, if so, whether such revocation hearing should be conducted in the locality of the charged violation(s) or in a Federal institution. The official designated to conduct the preliminary interview may be a United States Probation Officer in the district where the prisoner is confined, provided he is not the officer who recommended that the warrant be issued.

(b) At the beginning of the preliminary interview, the hearing officer shall explain the Board's revocation procedure to the prisoner and shall advise the prisoner that he may have the preliminary interview postponed so that he may obtain representation by an attorney or may arrange for the attendance of witnesses. The prisoner shall also be advised that if he cannot afford to retain an attorney he may apply to a United States District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing. The prisoner may also request the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the prisoner admits a violation or has been convicted of a new offense committed while on supervision or unless the hearing officer finds good cause for their non-attendance. At the preliminary interview the hearing officer shall review the violation charges with the prisoner, receive the statements of witnesses and documentary evidence on behalf of the prisoner, and allow cross-examination of those adverse witnesses in attendance.

(c) At the conclusion of the preliminary interview, the hearing officer shall prepare and submit to the Regional Director a summary of the interview, which shall include recommended findings of whether there is probable cause to hold the prisoner for a revocation hearing. Upon receipt of the summary of the preliminary interview, the Regional Director shall either order the prisoner reinstated to supervision, order that a revocation hearing be conducted in the locality of the charged violation(s), or direct that the prisoner be transferred to a Federal institution for a revocation hearing.

(d) The prisoner shall be retained in local custody pending completion of the preliminary interview, submission of the summary of the hearing officer, and notification by the Regional Director relative to further action.

(e) A postponed preliminary interview may be conducted as a local revocation hearing, by an examiner panel or other hearing officer designated by the Regional Director provided that the prisoner has been advised that the postponed preliminary interview will constitute his final revocation hearing.

§ 2.55 Local revocation hearing.

(a) If the prisoner requests a local revocation hearing prior to his return to a Federal institution, he shall be given a revocation hearing reasonably near the place of an alleged violation if the following conditions are met:

(1) The local hearing would facilitate the production of witnesses or the retention of counsel;

(2) The prisoner has not been convicted of a crime committed while under supervision; and

(3) The prisoner denies that he has violated any condition of his release. Otherwise, he shall be given a revocation hearing after he is returned to a Federal institution. However, the Regional Director may, on his own motion, designate a case for a local revocation hearing.

(b) If there are two or more alleged violations, the hearing shall be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant, as determined by the Regional Director.

(c) Following the hearing the prisoner shall be retained in custody until final action is taken relative to revocation or reinstatement, or until other instructions are issued by the Regional Director.

§ 2.56 Revocation hearing procedure.

(a) A revocation hearing shall be conducted by a hearing examiner panel or, in a local revocation hearing only, by another official designated by the Regional Director. In the latter case, the decision relative to revocation shall be made by an examiner panel on the basis of the hearing summary pursuant to the

provisions of § 2.23. A revocation decision may be appealed under the provisions of § 2.25, § 2.26, or § 2.27 as applicable.

(b) The purpose of the revocation hearing shall be to determine whether the prisoner has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(c) The alleged violator may present voluntary witnesses and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(d) If the alleged violator has not been convicted of a new criminal offense while under supervision and does not admit violation of any of the conditions of his release, the Board shall, on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocations may be based. Those adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance.

(e) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by reading or summarizing the appropriate document for the alleged violator.

**§ 2.57 Confidentiality of parole records.**

To the end that the objectives and procedures of professionalized parole may be advanced and, more specifically so that the channels of information vital to sound parole actions may be kept open and that offenders released on parole may be protected against publicity deleterious to their adjustment, the following principles relating to the confidentiality of parole records shall be followed by the Board:

(a) Dates of sentence and commitment, parole eligibility dates, mandatory release dates, dates of termination of sentence and whether an inmate is being considered for parole, has been granted or denied parole, and if granted parole, the effective date set by the Board will be disclosed in individual cases upon proper inquiry by a party in interest.

(b) Who, if any one, has supported or opposed an application for parole may be revealed at the Board's discretion only in the most exceptional circumstances, with the express approval of such person(s) and after a decision relative to parole has been made.

(c) Other matters contained in parole records, including how a member votes relative to parole, will be held strictly confidential and will not be disclosed to unauthorized persons.

NOTE: At 39 FR 20028, June 5, 1974, 28 CFR Part 2 was revised as set forth above. With the exception of § 2.20, which is effective nationwide, these rules were made applicable to the Board of Parole's Northeast Region (Region I). As of July 1, 1974, these rules were also made applicable to the Western and South Central Regions (39 FR 23261, June 27, 1974). In all other regions the Board's present rules (27 FR 8487, Aug. 24, 1962) are in effect until such time as the revised procedures are made applicable. For the convenience of the user these rules are set forth below.

## PART 2—PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

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EXHIBIT C
A 61

BIRCHEL LEONARD CARSON -- Reg. No. 03780-116

HEARING EXAMINERS - Quirk and Tenny

Mr. Carson let me introduce myself, my name is Mr. Quirk and to my right is Mr. Tenny. We are examiners with the Board of Parole and our purpose here today is to conduct a hearing as to the alleged violations of your mandatory release. I notice that you were notified that the case would be heard at this time. You are representated by counsel and you do have some voluntary witnesses, I believe to assist you in your case.

Alright. I think maybe at this time since we will have to do it eventually, maybe it would be good to get for the record some of the people who are here and get there names and there particular connection with the case.

First of all Counsel give us your full name, business address, business phone.

Leonard Rubin, 299 Broadway, New York, N.Y. 10007
Phone: 212-233-3330

Q: Thank you Mr. Rubin
We have Mr. Berger, Mr. Berger for the record will you give us your full name, title.

Roger H. Berger, U.S. Probation Officer, Southern District of New York

Q: Thank you sir.

Now the witnesses who are here:

Mr. Guill.

Mr. Guill: James P. Guill

Q: Your address

Mr. Guill: The Smoke Shop, Edgewater Plaza, Biloxi, Miss. 39530
Phone: 601-388-2022

Q: Thank you sir.
You sir.

Mr. Sanchez: Mr. Sanchez, 6104 - 200 - 18th St., Bayside, N.Y. 11364

Q: Thank you sir.

Alright , Mr. Carson you were notified that the case would be heard at this time, let me acquaint you with your counsel with the procedures we use here.

What we conduct is a non-adversary hearing ,that is to say that we are not a court of law,we are not trying any case,we are here to get facts, we are not covered by rules of evidence in that sense.

We have allegations of violations and we want to get the statements of all concerned because it is our overall purpose and obligation to give you a decision ,and the decision that we give you is a tentative decision, it is tentative because of what we give you today is going to be reviewed in our Regional Office in Phila. in about 15 working days you will get the official decision, the official decision will be in writing, you will have a right to appeal the official decision at the time you get the decision, you will also get the information concerning the procedures you use to appeal. If you feel you are bound to appeal then you have the necessary information.

Q: Are you O.K. up to that point?

Mr. C: Yes

Q: Our basic procedure is relatively simple, I'll explain it just a little bit now, but we will go over it later. We will be reading the charges to you. You do have a right to respond to those charges, you have a right to voluntary witnesses,you were advised of that right, otherwise you wouldn't be here. You have a right to counsel, you have already retained counsel. You have a right to examine adverse witnesses, I notice that you have completed the necessary forms, the CJA-22 in which you denied all charges and asked for a local hearing. Have you received a copy of what we called an H-22 The Warrant Application, which basically is the statement of charges your counsel has it in his hands right now.

Mr. Carson have you had sufficient time to prepare your case and also to confer with your attorney?

Mr. C: Yes.

Q: I am just checking off what we call a check list of your procedures of legal rights. So we make sure that everything at this point you have been advised of. The only other thing was that you have a right to present your explanation of the charges. The way we do that is that shortly I will ready these charges to you, one at a time, the charges we have in the warrant application, I will ask you that after the reading of each, for the record purposes you say admit or deny. Then we will go back and say that we will go back and give us any statement you want concerning these charges. I will also advise you that during the course of the hearing we will inquire into the whole period of supervision, because it will be incumbent on us to reach a decision, perhaps a second decision as to what to do in the event there is a violation, we must come up with another decision. We will be asking you what you have done during the period of supervision. We will caution you that anything you might admit to during

the course of this constitutes a violation of parole that is not listed on the H-22 we as members of the Board have the right to take that into consideration and make a finding on it.

Q: Do you understand what I mean?

Mr. C. Yes sir.

Q: In the course of this - something might come out that we will find another violation. You do have the right to take this into consideration. If we find that it constitutes a violation we can make a finding upon the standpoint of facts on hand or your admission.

Q: Alright I think to bring it up to date you had a complex prior record as far as sentencing is concerned - if I can make this out it started back in 1963 when you had a study case . . . . I forgot one thing, at any point during the course of the hearing, you have the right to consult with your attorney, you should, but the questions will be directed to you, we want the answers to come from you again for the record. Everybody will have their full say in reference to what we are trying to find out.

I think on this original thing that you had a study case, remember back when you had a 5 yr A-2 - you were paroled from that, a warrant was issued, parole was revoked, you went to CTC then there was another charge, 5 years consecutive on June, 1972 when you were MR'd on that on January 30, 1975, this is when you came out on MR right?

Mr. C: I came out on January 30, 1975 right.

Q: Now you I believe were in a CTC at that time. When were you actually released from Allenwood to go to the CTC.

Mr. C: It was 28

Q: So it was prior to about the 28th of 1974 - your effective date at that time was 1/30/75. You were released from the CTC with the certificate on January 30, 1975.

Mr. C: I was released, I'm not sure with my certificate.

Q: Did you receive your MR certificate which contained the rules or conditions of your MR?

Mr. C: I don't remember.

Q: Would you say that it had been read to you and you understood the conditions of your mandatory release?

Mr. C: Right.

Mr. C: Could my attorney look at that?

Q: Yes, the conditions of parole are the standard types of conditions.

Mr. Q: I will read them to you sir and if you like I will call special attention to the one . . . of the warrant application the requirement to file reports and make notification as to change in status, such as address so forth and so on. The conditions themselves not to leave the limits without written permission from the Probation Officer. Notify your probation officer of any change in residence. Make a complete and truthful written report to your Probation Officer between the first and third day of each month, and on the final day of parole. You shall also report to your probation officer at other times as directed, in any emergency you will get in touch with your probation officer or advisor, if you are arrested or questioned by law enforcement officer. You shall not enter into an agreement to act as an "informer" or special agency for any law-enforcement agency. You will work regularly unless excused by your probation officer, and support legal dependents, if any. You shall not drink alcoholic beverages to excess. You shall not purchase, possess, use or administer marijuana or narcotic or other habit-forming or dangerous drugs, unless prescribed or advised by a physician. You shall not frequent places where such drugs are illegally sold, dispensed, used or given away. You shall not associate with persons who have a criminal record unless you have permission of your probation officer. Nor shall you associate in persons engaged in criminal activity. You shall not have firearms (or other dangerous weapons) in your possession without the written permission of your probation officer, following prior approval of the U.S. Board of Parole.

Those are what we call standard conditions there are no special conditions attached such as the drug special condition, you may have heard of them. Those basically are the conditions.

Alright, according to the further information that we have, while it was issued on the alleged violations of the Mandatory Release of July 2, 1975 is it true that that warrant was executed by your arrest on July 3, 1975 in Biloxi, Miss.

Mr. C: Yes I was arrested on July 3, 1975 in Biloxi, Miss.

Q: When did you arrive back here Mr. Carson?

Mr. C: I was returned here on the 14th of August

Q: So it looks like you were in custody from July 3, 1975. Did you stay in Biloxi until you were moved here?

Mr. C: I was kept in a county jail. . No there were interim stops in Jackson, Miss. Federal Penitentiary in Atlanta, Petersburg,

Q: You have been in continuous custody since July 3rd.

Mr. C: Yes

Q: Alright, as I said before the basic procedures we use to read the charges to you asking if you will to either admit or deny on the reading of the single charges and then we will go back reading the information. We also will advise you of the information that we have that constitutes the violation. I am reading now from what Mr. Rubin has in front of him. Its the long application dated July 1, 1975 and recites to a certain extent what we have already been through particularly when you were released your termination date . . . It says that the allegation that you violated is the condition of your mandatory release according to this application.

First, by failure to submit a supervision report, you see that as the first charge, "As of June 25, 1975 Mr. Carson has failed to submit his supervision reports for the month of May 1975, according to USPO Berger's report of June 25, 1975." Do you admit or deny?
Mr. C: Deny
Failure to report change in residence. "On or about June 1, 1975 Mr. Carson left his approved residence at the Hotel Empire, 44 West 63rd St., N.Y., N.Y. has failed to report his change in residence to his USPO, according to USPO Berger's report of June 25, 1975. Mr. Carson's current whereabouts is unknown.

Mr. Q: Do you admit or deny?

Mr. C: Deny.

Q: Alright so there are the 2 charges and we have a denial on your part to both Mr. Carson. We make reference to Mr. Berger 's letter and as to the failure to submit a supervision report. . .

This is the letter refered to - we will read to Mr. Carson the particulars pertaining to the charges. This is the letter of June 25, 1975 Mr. Rubin. Its a letter requesting a warrant. Now as to failure to submit supervision reports we have information that since, well it will really pertains to both. He failed to send his monthly supervision reports and failed to respond to our letter of 6/6/75. On the failure to report change in residence, Mr. Berger reports that he went to the Hotel Empire on June 23, 1975 on 44 West 63rd St., New York City and spoke to the Asst. Manager of the Hotel who told him that Mr. Carson had left the Hotel approximately 3 weeks ago, and although he left no forwarding address ,there was some idea that he may have left for another Hotel in the city. Now that basically is the charges Mr. Berger makes - failure to submit supervision report, failure to report change in residence. Now, Mr. Carson what do you want to tell us about this?

Mr. R: We submitted a letter dated May 29, 1975 addressed to Mr. Berger and signed by Mr. Carson sent to the Probation Officer.

Q: What does it report to do?

Mr. R: It reports to be a monthly report and it also reports to

report a change of address and circumstances.

Q: I would say this that since we cannot show this to the record, and everything should be on the record we will ask Mr. Carson to tell us about these things.

Mr. R: I will read it to you.

Q: If you like. What we want is information as to the charges failure to submit supervision reports. You say that you did not fail to submit supervision report and you did not fail to report change in residence. We are interested in the particulars on what you base your denial on.

Mr. C: In the letter I said:

Dear Mr. Berger:

I tried to call you several times in the last few days but you were not around.

Q: Excuse me what is the date of the letter?

Mr. C: May 29, 1975

I have not as yet received my form to fill out for the month ( I might insert here that they were mailed to me each month at the hotel) so perhaps it has been lost or mishandled in the mail or by the folks here at the Empire Hotel. In the event, please consider this letter my report. I have no income to report for the month and since I am about out of funds I am in a precarious financial position;I am moving to the Plaza 50 Apartment Hotel, a friend of mine has lent me enough money to pay my bill here at the Empire and to get me moved into the new place. The reasons I am moving is that too many messages are messed up by the switchboard , here the rooms are constantly being robbed and I don't have a kitchen. In a few days I am going to Biloxi, Miss. where I am staying with a friend of mine, Mr. Pat Gill, 903 . . . Street, Phone 601-432-8782 as my jacket records indicate, I have extensive band and nightclub connections in the Gulf Coast area and since No. 1. I don't have connections here in N.Y. City and 2. the Probation Office in Boston where I do have connections has refused to permit the transfer of parole to that district and 3. since you have given me verbal permission to leave the district previously such as when I went to Powmal Vermont to check out that job possibility of managing a nightclub and to Boston both to consult with my attorney Ronald Herisko, 872 Massachusetts Ave., Cambridge, Mass. and other spots both to book and audition bands and since I don't want to break the law in order to earn a living and since you know where I'll be as per this letter I will be in contact with you on or before July 10, and I will return to N.Y. City at my residence at the Plaza 50, at 50th St. and 3rd Ave., N.Y. If you wish to see me sooner or wish to contact me I can be reached at Mr. Gill's home at Biloxi, Miss. Thank for your cooperation and understanding in this matter. Sincerely, Birchel Carson.

This is a photocopy I have think this could be made out.

Q: What you are saying is that what you did was write to Mr. Berger and told him that you didn't submit a supervison report because you hadn't received a blank. Was it normal practice for you to get the blank?

Mr. C: No it wasn't. The hotel I lived out ---

Q: Was it normal practice for Mr. Berger to send you a blank.

Mr. C: It was always mailed to me and I in turn mailed it back. I would like to point out that at the hotel where I stayed at has a notorious record for goofing up the mail and once I had to asked for a form because it had not come in the mail.

Q: Let me ask this question if I may.
Mr. Berger did you receive this letter?

Mr. B: No I did not. Not only that but I went out to the hotel and they seemed awfully careful about the mail and they were holding several of Mr. Carson's mail in a cardboard box and he let me see the return addresses on them. Here is a monthly report for April which was sent, filled out and returned to us. Here is the one for May, which was stamped not at the hotel Empire and returned to us. Here is another one for June, well after he had left the hotel and the girl still sent out the monthly report likewise that was returned to us.

Q: This should be the one for June and this is the one for May. May and June both of which came back MOVED.

Mr. B: This is one month after he had actually left the hotel and the hotel was still conscientiously picking up his mail and stamping it and returning it to us.

Q: I find one for the month of April and Mr. Carson you were at the hotel then.

Mr. C: Right.

Q:That is at 44 West 63rd Street, the next one is for May, 1975 which would be mailed to you at what point? When would you get your blank mailed to you the report for the previous month?

Mr. C: I think Mr. Berger could better answer, but as I recall they usually came toward the end of the month for the following month.

No. No. not for the following month. So the report for the month of May would have come somewhere around the end of May and be filed by the 1st to 3rd of May. The one for June would have come around the latter part of June and would be submitted around the first part of July which is as I have indicated in my letter when I was in Biloxi, Miss.

Q: Now what you are saying is that you never got the May one because you have left the hotel and gone to Biloxi.

Mr. C: I didn't get the May one possibly because I had already moved to the Plaza 50 Apt. Hotel depending upon what day it came.

Q: Well apparently it didn't come before you wrote your letter. You say you wrote your letter on May 29, 1975 and Mr. Berger said he didn't get your letter. He kept sending them out and they kept coming back. May I see those return envelopes.

Mr. B: That would be up to you. . . .

Mr. Q: What we basically up to this point Mr. Carson you say you wrote to Mr. Berger, and the letter you typed on explained why you didn't submit your supervision report for the month of May. May I make--let me ask why you why you failed to report your change in residence. What you said was in your letter of May 29, 1975 you were telling Mr. Berger that you were leaving the hotel and going to Biloxi.

Mr. C: That's correct.

Q: You did not ask Mr. Berger for permission to go to Biloxi. I think you read in your letter somewhere to the effect that he had previously gave you verbal permission to leave the district .

Mr. C: He had given me previous verbal permission to leave the district.

Q: You did not ask him specifically other than in that letter whether you could go to Biloxi.

Mr. C: I would like to at this point ask one of my witnesses.

Q: Mr. Berger says that you didn't submit supervision report and you say I deny that. What you are saying is that yes indeed you didnot submit the supervision report, you submitted this in lieu of the supervision report. Right?

You said that you didn't notify him direct of the change except in this letter, except that you were leaving.

Mr. R: I think we are having trouble with the language, he notified

him directly but not verbally he notified him by mail.

Q: He notified him by letter that Mr. Berger said he didn't get. The notification he gave is what I'm going at is contained in this letter. Did you call him.

Mr. Carson: Yes I did.

Q: Did you talk to Mr. Berger?

Mr. C: No I did not.

Q: Who did you talk to?

Mr. C: Evidentally his secretary.

Q: What did you tell the secretary?

Mr. C: I twice called and on the exact date I'm not sure of, but twice called and was told that he wasn't in, and I said that I would call back later. Once of the few times I distinctly remember leaving my name.

Q: Would that be before you wrote the letter?

Mr. C: Yes it was before I wrote the letter.

Q: Mr. Berger for the record would you like to indicate such a call was received.

Mr. B: The only thing I could say is that the girl who operates the switchboard telephones has been doing it for quite some time, and we have a new telephone system, the Centrex System . . . when I'm not in my office the call is put on the call forwarding where it goes right in the switchboard room where the girl answers and takes message or after 3 or 4 rings the girl picks up anyhow. In all accounts I have always got every message from her, she is very conscientious about it she takes the name, phone number and even a lengthy message if need be.

Mr. T: Do you use that system in the office today?

Mr. B: She handles most problems unless someone brings up a unique problem at the time, at which time an officer is asked to intervene.

Mr. T: In other words a call doesn't normally go to the officer.

Q: Is there any reason why you now having twice failed to reach Mr. B on phone you couldn't go down to see him.

Mr. C: None other than the fact that I was anxious to move from the Hotel Empire because of the factors I've stated in here, and because

of the fact that I have also indicated in the letter, I was anxiously trying to seek some kind of employment, to get some income I had looked for work as a computer programer here in N.Y. to no avail. I knew that my contacts in Biloxi, Miss. could get me an honest living. I also knew that a time factor existed there and I wanted to get there as soon as possible.

Q: Where were you when you wrote this letter?

Mr. C: At this time I was living at Hotel Empire.

Q: Now it was prior to this letter on two previous occasions that you called, if you didn't leave I still ask you could you not have gone down to see Mr. Berger.

Mr. C: I suppose I could have .

Q: Did you know that under the rules you should have spoke to him?

Mr. C: In answer to that I have to truthful say no, I didn't know because as I have indicated on numerous occasions both under I had been given permission on numerous occasions to leave the district and in pursuit of the same business which is the booking and managing of rock groups and thats consequently why . . .

Mr. Q: Mr. Berger does Mr. C have a requirement that you gave him on personal reporting.

Mr. B: He was coming in on a monthly reporting schedule and it never changed; I might have seen him more than that, I was making very frequent home visits and I missed him a couple of times and I may have caught him the first week of May and I followed him around the city for a while. At the time you say you wrote this letter at the Hotel Empire, the manager who is familar with Mr. C because there is a tremendous amount of activity there concerning Mr. C. he had already said he left the hotel. Now, . .

Q: When was your first knowledge date wise if you can recall, Mr. Berger that it came to your attention that he left the Empire.

Mr. B: When he returned the monthly supervison report which was about . . . I made a field visit since I got the monthly supervision report.

Q: Mr. Carson you didn't go down and ask directly.
When did you prior get permission to leave and was it in writing or verbal, how did you go about it.

Mr. C: It goes back to my living at the CTC, while living at the CTC on weekends we were permitted to furlough and on a minimum of 5 or 6 occasions I was permitted to go to the Boston area to consult with my attorney and for the purposes of intentionally lining up employment, while at the CTC.

Mr. R: For clarity, excuse me that was another attorney, that was not me.

Q: I understand. Who gave you the permission?

Mr. C: The permission was given by Mr. Walsh, through his emissary Mr. Fox.

Q: Who is Mr. Walsh?

Mr. C: Mr. Walsh is the director of the Community Treatment Center

Q: You didn't get permission at that time from Mr. Berger?

Mr.C: It wasn't required at that time because I wasn't under his supervision.

Q: You were going to various places with the knowledge and the permission of the authority of the CTC.

Mr. C: On January 30, when I was released on MR I was under the supervision of Mr. Wilson. Mr. Wilson permitted me to leave the district on verbal permission on at least 2 occasions. Once I distinctly remember being permitted to go to Waverly, N.Y. and on another to Boston.

Q: Let me ask you this, on those occasions do you recall Mr. Wilson gave you his verbal permission, did you come to the office and ask him.

Mr. C It occurred that I happened to know in advance that I was going to need to go to those cities, so it occurred at that time when I was making my personal appearance.

Q: So you would say to Mr. Wilson, can I go to so and so?

Mr. C: I would say at that time that I have a job 2 wks from now pending at Waverly and he would say or give me verbal permission.

Q: This did not happen with Mr. B.

Mr. C: Yes it did. At a later point when my case was transferred to Mr. Berger, for some reason I became one of Mr. Berger's case load. On one occasion particular I was permitted to go to Bowmal Vermont to seek a job as a manager of a bar which I subsequently rejected, and wisely so I think because it didn't seem to ---

Q: Mr. Berger gave you verbal permission.

Mr. C. Yes, Mr. Berger gave me verbal permission.

Q: Is that when you saw Mr. Berger in his office?

Mr. C: That was on one of the occasions that I saw him.

Q: Did he ever give you verbal permission without you seeing him?

Mr. C: He did not.

Q: So you assumed because he had, this would be sufficient

Mr. C: Because he had and Mr. Wilson had, this would suffice, and because I had given him the address of which I could be located.

Q: Did Mr. Berger ever tell you that any time you wanted permission you had to come and see him?

Mr. C: No he did not.

Q: Can you shed any light on this particular thing Mr. B.

Did you give him verbal permission to go to N.Y.?

Mr. B: To put the whole think into perspective for the record, while he was at the CTC he asked to be paroled to Boston, now Boston rejected the MR plan saying that they felt that residence plan was without substance. The CTC then called the Southern District of N.Y., and what we had was about 2 days to develop a plan until Mr. Carson was to be released. We have a policy not to hold the man back, and not to inhibit his freedom we took him out with a tentative plan or else he wouldn't have come right out. The report was hastily prepared now. . .

Mr. T: What report are you talking about sir ?

Mr. B: Well we had to report from CTC, but we didn't have time to verify the employment situation, we never had time to do that. I have from my notes here that he was released here on 1/30/75 to the Hotel Empire, 44 West 63rd St., Rm. 254, N.Y. and his employer would be the Creative Talents Co., Lawrence, Mass. Again there weren't verified as we usually do. On 1/31/75 there was an office visit. I believe that was his first visit., and report date. He was told that although the employer was located in Mass. in fact Mr. C said that although his employer was located in Mass. he would not go to Mass. without a PO's permission. He was given permission to travel on 1/31/75 by a previous PO, Mr. Wilson, Mr. Wilson is outside, by the way. to Williamsport, Pa. for 3 days, he was given permission for that. On 2/18/75 permission was given for a business trip to Waverly, N.Y.; at that time he was lectured on accountability that we were still having difficulty securing verification of employment, we still did not have verification from Mr. Carson and we were very skeptical of his employment plan but we still did not want to stand in the way of his livelihood. At no time was he given blanket

to travel anyplace. On 3/13/75 that was my first contact with Mr. Carson, the case was transferred to me a few weeks prior to that as a realignment of caseload. On 4/2/75 I gave him permission for a 1 day business trip to Bennington Vermont, now this trip was discussed on 4/2/75 with the supervising Probation Officer Michael Luciano, and we agreed at that time that no more travel permission would be given to Mr. Carson without a letter of permission to travel by the Parole Board. That was on agreement which was reached with the supervisor on 4/3/75. On 5/8/75 there was an office visit, at that time, we restricted Mr. C to a 75 mile radius of N.Y. City and he accepted this without argument and he was told that he could not go any further than that without permission of a letter in writing from the Parole Board, and that I refused to give him any permission on such trips thereafter.

Q: You remember those incidents Mr. C.

Mr. C: No I certainly don't.

Q: You don't remember talking with Mr. Luciano discussing the situation.

Mr. C: I remember being given verbal permission to go to Vermont' Mass. Pennsylvania and N.Y. and that dueto the fact that that is how I earn my living in booking bands in those areas, I can assure you that if I had been told to limit myself to a 75 mile radius I would have lodged an immediate objection.. I know no one in a 75 mile radius who could assist me in earning a living in the field in which I am engaged.

Mr. B: We had a reason for, we had an intelligible reason for restricting his travel. When he went to Bennington Vermont he gave us names of some people, and what he wanted to do, and I had called the Chief U.S.Probation Officer there and asked him to make some discrete inquiries of the City Counsel, and he checked out the names of the associates that Mr.Carson wanted to go into business with. The attorney for the group, according to the Chief Mr. DeShea, I believe his name is, had been arrested just that week on state fraud charges and the other fellows involved were considered to be front men for the Mafia. It was pretty shakey this business venture, he wanted to open a topless bar, topless bars were not allowed in Vermont at that time. City Counsel would definitely not give a license, because of the associates we felt he might be lapsing into criminal behavior and the restrictions were definitely put on.

Mr. C: If I may I would like to say, that I have never been advised of a restricted area, and would have definitely, if necessary contacted Mr. Berger's superior or whoever because I know no clubs and knew no bands within the 75 miles radius, and to do that would be to effectively eliminate the possibility of my earning an honest living.

Mr. B: Further I think the conversation should be remembered because I informed Mr. C at the time of the subsequent office visit that the attorney had been indicted and arrested according to our information from Vermont and he laughed it off.

Mr. C: I had already learned of this and when I returned from Vermont on a job interview I had also learned of the nature of some of the people involved. I had turned down the offer of the job interview.

Q: When did you go to Vermont?

Mr. C: I don't remember the date.

Mr. B: The permission had been given and he had asked permission and the trip was postphoned because of bad weather for one week and it took place one week later. He called on each occasion.

Mr. C: I don't remember, I / don't remember I do remember definitely going and after looking the situation over I turned down the job offer because it didn't look like the type of thing that I wanted to be involved in and subsequently I understand the bar has opened and certainly not with me involved.

Q: But it was Vermont and Williamsport any other place that you got permission to go to Mr. C?

Mr. C: There were a number of occasions, but I can't remember all of them, definitely on several occasions.

Q: Where did you go?
Do you remember where you went.

Mr. C: I went to Boston, Waverly, N.Y., Williamsport, PA, Powelton and Bennington, Vt. all with verbal permission.

Q: You assumed this was the proper way to handle your trip to Biloxi?

You have information here to indicate you were in Canada.
Did you have permission to go to Canada?

Mr. C: No permission to go to Canada.

Q: Did you go to Canada?

Mr. R: We are going to object to that if you please, the permission being that the facts are that these are not part of the specifications of charges.

Q: Neither is the Biloxi thing Mr. Rubin.

Q: He was arrested in Biloxi so it becomes a part of it at that point.

I'll ask you again did you go to Vermont, I'll show you what we have we have information from the hotel that you have been in the Holiday Inn in Canada. Now you were either in Canada or you weren't in Canada.

Mr. C: I went to Canada.

Q: Did you have permission to go to Canada.

Mr. C: No I did not.

I assumed again that the same rule would suffice and that is that in pursuit of my business which is managing rockbands that as long as it was in that nature.

Q: You are assuming that what Mr. Berger is claiming is not true. Blanket type permission that you would ask to go to one place and if necessary to go to someplace beyond there you will go.

Mr C: My explanation would be that as I have indicated earlier due to the presedence that has been established both at the CTC and under Mr. Wilson's supervision and under Mr. Berger's supervision I don't think it was unreasonable for me to assume that one of those is in pursuit of my business and not engaged in illegal activities to travel.

Q: You know that you should get permission to travel out of the district

Mr. C: Yes,you are right with regard to the letter of parole stipulations I should no doubt had written permission.

Q: What were the circumstances of your apprehension in Biloxi? you were down there I guess what was it July, I don't believe when you read the letter here you I don't recall you did say something about Biloxi but you gave no time frame as to how long you would be down there. I said

Mr. C: I said I would return on July on or before July 10th, and if he needed to get in touch with me I had the address and phone number.

Q: What were the circumstances of your apprehension in Biloxi.

Mr. C: If I may to give you the background the circumstances of my being there are important too. That is the fact that Mr. Gill whom I have known and whose family I have known since 1968 had suggested in a phone call the possibility of a Disco-Tec being

opened in Biloxi. Due to the fact that he and I virtually know all the musicians in the area it seemed like a logical arrangement whereby we could get a club opened we could definitely fulfill the band requirement relatively easily. So, after talking with him on the phone, I did make the effort to reach Mr. Berger and was unable to reach Mr. Berger was unable to do so, mailed the letter, move and then went to Biloxi, Miss. where engaged in some negotiations to rent a building and we obtained some financial aid from some merchants there and we petitioned the Biloxi city counsel for zoning and here is a letter from an interested party there.

Q: You went down there for business purposes and . . .

Mr. C: I certainly was not hiding, I was using my own name and living in the open .

Q: What were the circumstances of you being picked up?

Mr. C: The day I was arrested, I was arrested strangely enough at Mr. Gill's home whose address appears in this letter which Mr. B allegedly didn't receive.

Q: You were arrested by whom?

Mr. C: By the FBI

Q: On the basis of the violation warrant

Mr. C: I assumed, they didn't have the warrant at that time.

They said I was arrested as a parole violator.

Q: You were working with Mr. Gill where you down there?

Mr. C: Mr. Gill and a number of other people, at this point I would like to have Mr. Gill get on the record.

Q: Alright. You are saying Mr. Gill invited you down at least to investigate the possibilty of business opportunity. Mr. Gill is here on the basis to verify the fact that he had contacted you from Biloxi and he has know knowledge whether you had permission or not

Mr. C: Of course not , but he did on one occasion witness my attempt. to call Mr. B. from Miss.

Mr. Gill: ,May I say something when he had gotten down I had asked him knowing of his record in the past, I had asked him if he was here rightfully and legally and he had said Yes, he had mailed a letter to Mr. Berger and that he had tried to call him a few days after he had gotten there, and that we were trying to open up a club.

Mr. Q: Did you see him make the call?

Mr. Gill: Yes right from my store a paid telephone.

Mr. Q: You had no knowledge of whom he was calling? Did he tell you who he was calling?

Mr. G: He asked for Mr. Berger.

Mr. Q: Have you any indication Mr. Berger of ever hearing of Mr. Carson after he left the Empire Hotel until such time as he was arrested from the warrant.

Mr. B: We had a number of phone calls from all over the country and to Mr. C. arrest on our warrant asking me what it was all about. from Mr. Gill subsequent

Mr. Q: You told Mr. G at that time why he was arrested at that time

Mr. B: What was actually transpiring at that time was the police in Biloxi had contacted the FBI office and and sent a TELEX to the FBI Office here and found out that I was the PO on the case and called me to get some information on the case to get some information on Mr. Carson. Apparently what they were concerned about was the ads Mr. C was running in a local newspaper, a number of local newspapers concerning an ad in general looking for young men, teenagers to come to N.Y. as trainees as managers of rock and roll groups to tour the orient. The police down there were concerned and felt there were questions with moral turpitude involved and apparently they were in contact with the FBI Office in Miss. The agent who contacted me up here was Ed Ansen. . .

Q: That would be your first knowledge as to where he was

Mr. R: Can I say an opjection to this as being totally immaterial and irrelevant to the issue.

Q: What we are inquiring is if he was in Biloxi. I'll ask Mr. C did he put ads in the paper? looking for people to work in the business

Mr. C: Definitely, but not for teenagers as moral turpitude oriented.

Mr. Q: I'm sure Mr. C you didn't advertise that in the paper about moral turpitude.

Mr. C: May I explain to you what the add stated?

Mr. Q: What Mr. Berger said was in trying to pinpoint, he says that the police contacted the FBI because they felt this. Now I would like to explain to you why the police were involved.

Mr. C: In making our inquiries concerning this Disco-Tec we on several occasions spoke with my attorney in Gulf Port Miss. contacted the police dept. gave them my social security number and on many

occasions members of the police dept. met me and knew Mr. Gill and knew the fact that I was Birch Carson and had a criminal record I certainly wasn't trying to hide from anybody.

Mr. Q: I think you are kind of over reacting to an attempt to find out from Mr. B when he first found out that you were in Biloxi and what he said was that the information came.

Mr. B: It was the same date [illegible] call from Agent Ansen was the same date that the w[illegible]ed, signed, because I called Mr. John Sicoli to se[illegible]ant had been signed and he assured me it had and the i[illegible]s then related to Mr. Ansen who relayed the warran[illegible]

Mr. Q: On the basis of that information somebody found out where Mr. Carson was and from that point they were looking for him. Is that the only place that you went to Biloxi in this trip that you make mention of.

Mr. C: Yes, Biloxi and Gulf Port which is a neighboring . . .

Mr. Q: At any time during these trips that you made did you say you had either assumed permission or felt you had permission were you ever told you had to contact a Probation Officer of that particular area to tell them . . .

Mr. C: Never was . .

After I was arrested in Gulf Port of course . . .
But I would like to stress again that when I went to Powmel Vermont prior to going there, I had called the Chief Probation Officer of the District of Vermont and asked him - concerning the fact that I might come up there. With regard to Williamsport I had permission from either Mr. Berger.

Q: Did you ever get written permission at all.

Mr. C: Never did, never required. so many occasions I was permitted to leave.

Mr. B: I will interject on the instance where I gave him permission to go to Bennington Vermont. It is a practice of mine in some instances he called and said he had to go immediately , therefore I believe I asked him to come in and get a letter and he said there wasn't sufficier time. So I, gave him permission.

Mr. C: What happened that morening, it was raining like mad and that was the day of my meeting with you and you came in early that morning and I made a special trip on the train to see you and as soon as I saw you I was given verbal permission to leave. I saw you early that morning, you came in early especially to see me.

Mr. B: Under no circumstances was he given any permission to go to any of the other places. In fact, just the opposite on the last

office visit before we lost contact at the end he was again told he could not leave the 75 mile radius without written permission from the Parole Board and that was . . . was signed by the Supv. Probation Offier Mr. Luciano agreed.

Mr.C: I have no recollection of having been told that because to do so is to vertually incarcerate, if that had been the case I certainly would have appealed to somebody because I had no business contacts within the 75 mile radius and it would seem to me that an act such as that would be designed to cause a violation of parole if in fact I had been given that.

Mr. B: I might add also that the Asst. Manager of Empire Hotel was so familiar with Mr. C for the very type of allegation by the police in Biloxi and FBI in Miss. which was that the switchboard was constantly busy at the Hotel Empire in response to adds placed in the Village Voice, 4 people to tour the orient as managers of rock and roll bands and well after he had left the hotel people were still coming by.

Mr. R: May we make a statement?

Mr. C: There was an add in the Village Voice, yes the add referred to the fact that I was looking for bands to book and manage for jobs touring the U.S. and military installations and to that end I had a contact in Miami, Fla. who was a booking agentwho booked bands in the Orient, Bands are traditionally are made up by men and I image there were men calling through the switchboard. Certainly there was no evil intent or any as there has been viciously implied.

Q: Was this a normal thing in trying to book bands?

Mr. G: He booked us in 1968 and that is how I met him as a manager. I did very well with promoting the groups a couple of single records and was on the road in New England area and mid-west area for 2 or 3 years when I was about 17 or 18 years old. There was never any draw backs from that from my family or Mr. Carsons.

Mr. B: Also during that period April-May in fact earlier March, April and May before he went to Vermont at the time he went to Vermont he was under investigation by the FBI for the fraudulent and cashing.

Mr. R: Could we object to this unless we get enough specific criminal charges brought into this.

Q: What point are you trying to make Mr. Berger?

B: That we would have had very definite specific travel restrictions with somebody . . .

Q: What you are saying Mr. B is that Mr. C from your standpoint had no reason to assume that he could get blanket type permission to travel.

B: Absolutely not, just the opposite.

Q: Alright.

When you left the CTC, you were in the CTC for how long?

Mr. C: That would have been about five months, I would say, from August 28 to January 30th, I guess.

Mr. Q.: And you were living there at that time, at the CTC. Were you working?

Mr. C.: No, I was attending Columbia University.

Mr. Q.: Were you attending Columbia when you left the CTC?

Mr. C. No, because the semester had expired about two weeks prior to my leaving the CTC and I wasn't going to be able to afford to continue.

Mr. Q.: You came out in January, the 30th of January I see the semester. ..... Alright where did you go then, Mr. Carson?

Mr. C.: I lived at the Empire Hotel.

Mr. Q.: Is that the address that you have had since you were in New York City?

Mr. C.: Until I advised of the change of address to the Plaza 50.

Mr. Q.: And then it was from the Plaza 50 that you went to Biloxi.

Mr. C.: That is correct.

Mr. Q.: So address-wise, it was the Empire then the Plaza 50, then you went to Biloxi?

Mr. C.: That's right.

Mr. Q: Now, were you working?

Mr. C.: Well, No I take that back, excuse me, there was a period, there is a practice that I don't know if you are aware of; while you are in a CTC, you are permitted to have a room or an apartment elsewhere, and I lived at the YMCA for -- I don't know, I think for possibly it was about two months.

Mr. Q.: But you were still under the jurisdiction of the CTC?

Mr. C.: Under the CTC, right.

Mr. Q.: You went to Columbia; What happened, work-wise now, what did you do?

Mr. C.: While I was at Columbia, I worked a little bit for the University under the work release program, Work Study Program I think it is called, and attempted to try to book some bands, or at least line up some bands to be booking on January 30, when I know I'd be released totally from the CTC.

Mr. Q.: Is this your stock and trade? Is this what you do, was it before you went to the institutions -- before you came out?

Mr. C.: Yes, Sir, yes it was.

Mr. Q.: Really, your plan was to come back out to the CTC? You were eventually going back to the business of booking bands?

Mr. C.: That's correct. And to that end I had applied to the Boston area which is where I am primarily.... I had my bands and my contacts and as Mr. Berger has indicated they rejected it for some reason I know not why. In other words, I was paroled to New York City because this is where the crime was... this is where I was convicted, and I had no contacts here. I had no relatives and no jobs.

Mr. Q.: So at this point, you weren't really actively employed until you went down to Biloxi to see Mr. Gill?

Mr. C.: Oh, no, that's not true.

Mr. Q.: Well, tell me what is true.

Mr. C.: I will, From January, if Mr. Berger has my file here, we requested some documents for this hearing.

Mr. Q.: Can't you just tell me where you worked, Mr. Carson?

Mr. C.: O.K. I was in Waverly, New York, I was in Williamsport, Pa.

Mr. Q.: Working?

Mr. C.: Yes, booking Bands or running dances in conjunction with the Community College in Williamsport, Pa., Lake Huntington, N.Y.

Mr. Q.: This is in connection with your employment. You were actually employed booking bands in these places as a booker of bands.

Mr. C.: I was either booking a band or promoting an engagement which employed a band.

Mr. Q.: I see. This is what you have done all the time; even down in Biloxi you would be looking to do the same thing?

Mr. C.: That's right.

Mr. Q.: Booking a band.

Mr. C.: And the discoteque as I have explained was our major concern.

Mr. Q.: What else happened to you while you were on the road and while you were down there working with Mr. Gill, and you had been to various places. And you didn't report in to the PO's, were you at any time in these places when you were supposed to be filing reports? And did you so file reports on the first of the month or did these reports get to you, Mr. Carson?

Mr. R.: It may have been the June report.

Mr. C.: The June report I felt was covered by this letter.

Mr. Q.: I am trying to find the reports prior to that.

Mr. C.: Prior to that I filed ..... reports.

Mr. Q.: Let me rephrase my question again. Were you filing reports, for example, were you in Williamsport at the time it would come for report filing time? Were you in Waverly?.....

Mr. C.: I would have to look up my----------

Mr. Q.: Do you remember sending reports in from places when you were outside of New York City?

Mr. C.: One of the formal reports.

Mr. Q.: Written reports, Yes.

Mr. C.: I don't believe I ever sent one out. I can't recall having sent one from outside.

Mr. Q.: So any time that you did up until the time you wrote this letter you were in New York City?

Mr. C.: When I filed my reports. To the best of my knowledge that is correct.

Mr. Q.: Were you arrested at any time during your period of parole or any type of violations.. drug use?

Mr. C.: Absolutely not; in fact if I may, I want to elucidate on that because I'm adamant against drug usage, and Mr. Gill, whose band members of the band in which he was a member, were 16 and 17 and 18 years old, with the full consent of their parents kept them off the street, and they were definitely against all drug use.

Mr. Q.: Was it your opinion....would youhave been handicapped as far as your business operation is concerned, if you had to get written permission each time you wanted to leave the area? Would that have handicapped ..... or as Mr. Berger said would you have situations where all of a sudden you would have to go?

Mr. C.: Yes, sir, I think it would.

Mr. Q.: Would that not be the case in the future?

Mr. C.: No, because if the discoteque... as the letter I just had you read from Magnolia Realty Company indicates that the discoteque is still available for rental.

Mr. Q.: Alright, tell me about your future planning if you go back out there on parole what are you going to do? Where are you going to live? Where are you going to work?

Mr. C.: Well, I am going to live with Mr. Gill and his family at 903 Caillevet Street, that's Biloxi, yea, and I will be working for myself in conjunction with Mr. Gill and a third partner, at this discoteque, which is called, for the record, Captain Ducks.

Mr. Q.: And you would be, what, a partner, in that?

Mr. C.: I would be a partner in the firm, right.

Mr. Q.: In other words, your plan calls for leaving New York on a permanant basis. I should say this district.

Mr. C.: Preferably, And to that end Mr. Gill has talked to Mr. Gerald Brown, the Chief Probation Officer down there in Gulfport, and expressed to him his interest in my case.

Mr. Q.: Has Mr. Brown been in touch with you, Mr. Berger, at all about getting in contact with Mr. Gill?

Mr. B.: Yea, I believe that he did the preliminary interview if I recall, didn't he?

Mr. Q.: Yeah. Did he say has he been in contact with you about the plan?

Mr. B.: Only what you have there, I believe, and some subsequent information, but nothing..... Yeah, he did; in this subsequent letter he said something that Mr. Gill had been taken for a bounced check of a hundred or a hundred and fifty dollars.

Mr. R.: I can't believe that Mr. Berger's demand of the English language is so limited that he must attempt to do this at every question. None of his answers in response to your questions have been responsive.

Mr. Q.: Well, let me see if I can get a response from Mr. Carson. There's an allegation of bum checks. If you want to put the "bum" in quotes, if that's -------- or whatever it is, tell me about it, or have you been involved in issuing checks that were insufficient funds or whatever else you would describe to the attitude?

Mr. C.: O.K. in answer to that questio, there was a question because inadvertently a check had been written on an account. I had two accounts, one which had been closed, I had inadvertently written it to Mr. Gill; he had cashed it, and at a later date I redeemed the check. Now I don't understand how that has any bearing up-on..... I don't know.....It seems to me that the man's hatred is.... knows no bounds.....

Mr. Q.: Well, we'll check how much was that check, and we'll ask Mr. Gill. What was that all about, Mr. Gill?

Mr. G.: In my store there he has written a check for some money or cash while he was down there.

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Mr. Q.: And you took the check?

Mr. G.: Right.

Mr. Q.: And when you negotiated the check, it eventually came back on, what, insufficient funds?

Mr. G.: That's the way it came back, and it's that check which I approached him about, and he said it was a different account, that he had had two accounts there...

Mr. Q.: Do you remember what bank it might have been, was it a New York bank?

Mr. G.: I don't remember. Chase-Manhattan, possibly.

Mr. Q.: That would be the account you had here in New York City.

Mr. C.: Yes, yeah.

Mr. Q.: And you say you made good that check?

Mr. C.: Yes.

Mr. Q.: In that sense. Maybe Mr. Rubin might think that's the wrong word again, but you satisfied...

Mr. C.: I paid Mr. Gill the money

Mr. G.: U. S. currency.

Mr. Q.: Was that ever, did that ever come up again? Do you owe money someplace else? I notice that there was some question since we've opened that up alittle bit now. Have you ever paid off the amount that the Canada Hotel says you owed?

Mr. C.: Well, I haven't been contacted by the Canada Hotel. And possibly the reason was maybe the letter was written after I had moved.

Mr. Q.: You've never heard from them?

Mr. C.: I never heard from them. However, to that end I would certainly satisfy that they contend that I owe money.

Mr. Q.: You don't know whether you do or not? Your recollection is that when you left there you paid your bill and didn't owe any outstanding...

Mr. C.: Yes, Sir, because I've been incarcerated for ninety days. I don't even know where my records are at this point.

Mr. Q.: This would be back long before they went to Biloxi.

Mr. C.: Well, that's what I'm saying. I don't know where my records are, my checkbooks, my checkstubs, my reconciliation sheets...

Mr. Q.: And they always use the name of Carson, Mr. Carson?

Mr. C.: No, I was convicted under the name of Bradley Thompson.

Mr. Q.: Since you've been out on Mandatory Release, have you always used the name of Carson?

Mr. C.: Absolutely.

Mr. Q.: In all your dealings? No aliases or anything else? Always used your own name?

Mr. C.: Yes, I believe...Yes, Yes I have. I've got no reason to use any other name. I would say at this point that because I had used Brad Thompson in the past that many people in Mississippi call me Brad.

Mr. Q.: Well, you could have a checking account sample in the name of Brad Thompson.

Mr. C.: No.

Mr. Q.: Everything is in the name of Birchel Leonard Carson.

Mr. C.: That's right.

Mr. Q.: Anything you might have done as far as business is concerned is in that name.

Mr. C.: That's correct.

Mr. Q.: I see.

Mr. ?.: This is a copy of the people present at the City Council meeting for rezoning for club usage down at...and the Mayor, Gerry O'Keefe, Birch Carson, myself,Steve Nicovich, Commissioners.

Mr. Q.: I think we've established the fact that Mr. Carson was in Biloxi.

Mr. C.: And but, and using my own name. I definitely have not attempted to be anybody else.

Mr. T.: On these checks, Mr. Carson, I say these checks, allegations--checks. Are there any charges pending against you anywhere?

Mr. C.: Not to my knowledge. I haven't been advised of any.

Mr. T.: Are there any detainers?

Mr. C.: No, Sir. I have minimum custody in this institution. I work for the Captains Office, I believe a letter is in my file indicating that they're happy with the work that I've been doing. Four days ago I travelled to the GSA Warehouse with a female secretary to obtain supplies. Certainly I have not violated any trust-- well, while at Allenwood I didn't and neither did I in the Secret----

Mr. T.: Mr. Berger, do you have any information as to pending charges anywhere?

Mr. B.: As to the charges in Rexdale, Ontario--what I have is a letter which I believe I forwarded to the Parole Board and kept a photo-copy for myself from one of the accountants at the Holiday Inns in Rexdale, Ontario, the Accounts Receivable section where they sent us a copy of the bill, the hotel room, the charge card....

Mr. R.: I'm going to object to that. Now you asked him a specific question. You asked him if any charges were pending. He's telling you about a complaint letter from an accountant. Now if Mr. Berger doesn't speak English perhaps we ought to put it to him in some other language. That's the third time he's done that. I think it's disgraceful.

Mr. T.: Are there any specific charges pending anywhere?

Mr. B.: What she said was that she had contacted the Royal Canadian Mounted Police as the...

Mr. R.: Well, that's not a charge, either. I'm going to object to that. I'm going to ask you to redirect your question and see if Mr. Berger can get it right this time.

Mr. Q.: Well, Mr. Rubin, let me just tell you something. You know, over here, we're just trying to find the facts. We can inquire into any area that we want. Mr. Carson can admit or deny anything that he wants.

Mr. R.: I understand that.

Mr. Q.: But I wish you would not try to restrict Mr. Berger from answering in the best way he thinks he can handle it. We will decide whether he....

Mr. R.: Sir, we all have to use the same language if we're going to communicate. If you use the word charges and he answers with a letter of complaint....

Mr. Q.: The question was any charges filed; Mr. Berger is explaining the charges filed.

Mr. R.: No, he wasn't. He was misusing the word charges. He knows that accountants don't make charges through the mail.

Mr. Q.: Your information is, Mister, that there could be charges....

Mr. B.: That she, that the Holiday Inns had turned the matter over to the Royal Canadian Mounted Police, and as the presentence investigation of the records show, he still owes time to the Canadian jail there, so there has to be charges up there even though....

Mr. Q.: Nothing has been filed in your office of some official....

Mr. B.: I also received a letter from Mr. Herisko in Massachusetts. He claimed in his letter that----

Mr. R.: I'm going to object to anything that Mr. Herisko may have said. I think----

Mr. Q.: Your objection's a note of Counsel. Go ahead, Mr. Berger.

Mr. B.: He had represented Mr. Carson in a civil matter. And what happened is that he received a five hundred dollar check in payment for services rendered which were double endorsed, and the check was ultimately determined to be stolen from a company, and that he turned the matter over to Cambridge police. I talked to Detective Morrison in Cambridge, who said he was reluctant to file a criminal complaint because his department would not give him money to extradite and he did not call on such a charge. But at my last contact he was in the process of filing a criminal complaint.

Mr. Q.: So there could be pending charges?

Mr. B.: And finally on Monday Mr. Lester Battles came to my office, postal inspector in the Southern District of New York, concerning an investigation of money orders which I think were documented at the time of the preliminary parole hearing in Mississippi by the Chief Probation Officer. I think there were three or four of them and they were tryingto determine Mr. Carson's role in these money orders which were determined stolen from a Boston post office----

Mr. Q.: This would be an investigative stage?

Mr. B.: Yes.

Mr. Q.: Now, Mr. Carson, these of course are something we didn't know about. Did you know about Mr. Herisko's check or anything of that nature?

Mr. C.: I had talked to Mr. Herisko about this.

Mr. Q.: Did you give him a check on which----

Mr. C.: A check had been given to me inpayment for debt and I had endorsed it to Mr. Herisko, and he had been kind enough to cash it, and because of the hotel's terrible switchboard system , its communication system, had tried to call me on several occasions and when I did not respond evidently he contacted Mr. Berger. At a later date Mr. Herisko and I arrived at an agreement on the amount of money owed to. I certainly didn't attempt to burn my own attorney, you know, not....

Mr. Q.: When would that have been, Mr. Carson?

Mr. C.: I don't have the faintest idea.

Mr. Q.: Was it recently, or a long time ago?

Mr. C.: I've been in custody ninety days, so it could not have been since July third. I have no idea what month it was.

Mr. Q.: You say you made themoney good. Was it, how much did you pay Mr. Herisko?

Mr. C.: I didn't pay him cash, I made an assignment to Mr. Herisko in the amount of the money involved.

Mr. Q.: Well, how much was that?

Mr. C.: Five hundred dollars.

Mr. Q.: Was that assignment a check?

Mr. C.: No.

Mr. R.: To explain, he has a case pending that Mr. Herisko is handling, which Mr. Herisko evaluates to be---in the neighborhood of forty or fifty thousand dollars. And not only do his lawyers' fees come out of that, but also --- the five hundred dollars that says that Birchel owes him out of that. That's what he means by an assignment.

Mr. C.: A lean against the law suit.

Mr. R.: Right.

Mr. Q.: All right, we'll ask again. Maybe I can get the answer, maybe I can't, maybe he can't remember....

Mr. C.: No Sir, I don't.

Mr. R.: He can get you that date.

Mr. Q.: Mr. Herisko, on a letter of April 29, 1975, now pinpoint the date, wrote to the bank of New York about the check, and he said we intend to file federal charges against Mr. Carson. Now I'm just asking you if it was after that you had your arrangement with Mr.---

Mr. C.: Yes, definitely.

Mr. T.: I have a question I'd like to direct to Ms. Harrington, Mr. Carson's Caseworker: Do you know of any detainers being placed against him here in this country?

Ms. H.: No, I don't know of any.

Mr. T.: Thank you.

Mr. Q.: Is there anything else, Mr. Tenney, that you could question?

Mr. T.: No, I have nothing.

Mr. R.: May I have an opportunity to examine Mr. Berger?

Mr. Q.: You're permitted to ask him questions, certainly.

Mr. R.: Mr. Berger made a statement that the Empire Hotel seemingly, were awfully careful about the mail and the phone calls. Do you have any personal knowledge of that?

Mr. B.: In my dealings with them, I, I mean I didn't find out about Canada, or about their holding mail for him, which they allowed him to see.

Mr. R.: Have you ever examined their policy as to how they handle mail?

Mr. B.: No, I haven't.

Mr. R.: You haven't done that. Have you ever stood there and observed how their employees do it?

Mr. B.: No.

Mr. R.: You haven't done that. The last two letters I noticed you sent Mr. Carson were in the name of Bradley Thompson, is that correct, Sir? Has he registered at the hotel, to your knowledge, under the name of Bradley Thompson? As a matter of fact, weren't the previous letters all sent to him on the name of Birchel Carson?

Mr. B.: When I went out to the hotel I inquired under both names. All my iquiries, all my letters sent out were Bradley Thompson and Birchel Carson.

Mr. R.: Oh, but these were sent out only in the name of Bradley Thompson, not Birchel Carson, is that right?

Mr. B.: I believe so.

Mr. R.: And in fact, if he were listed as Birchel Carson in terms of receiving mail and of course they wouldn't know him under the other name, is that right?

Mr. B.: Right, right. No, because up in the top corner there we have Birchel Carson, I believe, and....

Mr. R.: The top corner of the form?

Mr. B.: Well, I guessyou've got a point there.

Mr. Q.: You sent to Mr, Thompson?

Mr. B.: Bradley Thompson.

Mr. Q.: Was he known as Bradley Thompson?

Mr. B.: I can't answer that.

Mr. Q.: I see. Go ahead, Mr. Rubin.

Mr. R.: You did mention that the girl who answers the phone at your office is quite conscientious and takes all the messages. You never fail to get messages, is that right, Sir? Could you tell me, how many times do you recall have you received phone calls from me in my office in the past two days?

Mr. B.: I'd say I had about three or four slips.

Mr. R.: Would it surprise you if I told you that I called you on at least twelve occasions, particuoarly six times today, since we're five and a half hours late getting...

Mr. B.: I wasn't in my office much of today. I wasn't at my mailbox much of the day when I get messages....

Mr. R.: Could you tell me how many calls you returned to me of the six or seven you received?

Mr. Q.: What's the point you're trying tomake, Mr. Rubin?

Mr. R.: I'm trying to find out how efficient that office is, since he says it's so efficient. Certainly Mr. Carson....

Mr. Q.: Would you please confine what you're doing to the evidence of the allegation?

Mr. R.: All right. I'll move on. As a matter of fact, you're familiar with the rules of probation as given to a probationer in terms of his not being able to leave the limits of the district without written permission, aren't you, Sir? And yet you violated those rules, is that right, Sir? You let him go without written permission, is that a fact?

Mr. B.: Well, let me tell you something. Let me explain it to you, so then we won't have a black or white situation here. We're not going to hold the man back from employmentthat we think is something legitimate--------A man calls at the last minute. He's got a business appointment, he's got a business deal to close. Many of the people under supervision travel a great deal. Some come in for letters when they can, sometimes the supervising PO issues a letter, sometimes the supervising PO given the circumstances just gives verbal permission over the phone and records it in a notebook. Sometimes I give verbal permission, and when the situation is possible. And this is usually done for the probationer or for the parolee's convenience, so they're not hopping down here and taking a cab out to the airport for something, we try and give them full permission.

Mr. R.: Now there was an occasion, however, where Mr. Carson was in your office the day that he referred to, it was raining cats and dogs, or some phrase like that? And he got permission from you

to go somewhere, to Vermont or someplace?

Mr. B: Bennington Vermont, I think it was the phone call that came through late in the afternoon.

Mr. R: Wasn't he in your office that day. You are saying he was not in your office.

Mr. B: There was a phone call

Mr. R: Do you have any records? Just to refresh your recollection. Do you have those with you.

Mr. B: No.

Mr. R: You say there came a time that you found out a lot of activity on the phone, young men calling Mr. Carson about the ad in the Voice did you ever discuss that add and what Mr. Carson was doing with it?

Mr. B: No I had lost contact with him at the point where the monthly supervision report was returned then I went out to the Hotel to talk with the Asst. Manager to make some inquiries

Mr. R: Wasn't this back in April that this happened?

Mr. B: Yes, I'm not a mind reader I don't have propellers I didn't know who was running adds in the Voice he had never told me about it.

Mr. R: When did you first learn that he was running an add in the Village Voice.

Mr. B: When I had talked to the Hotel Manager after the monthly report was returned to us in June.

Mr. R: That was the first time you heard it? As a matter of fact is Mr. C engaged in the music business as he has said?

Mr. B: I really couldn't tell you.

Q: Mr. R we know he is engaged in the business. There is no allegations about his putting ads in the paper. At the moment I am having difficulty folling the . . . the admissions we have are what we are going to take into consideration. We have been all over this.

Mr. R: That is all I have for Mr. B.

Mr. R: I would just like to present Mr. Gill who has told you a great deal about what he has to say. I would like to ask him a couple questions. When and where did you meet Mr. Carson,

Mr. Gill: 1968 as a booking agent

Mr. R: Were you a musician at the time?

Mr. G: Yes

Mr. R: He was in the music business,

Mr. G: Yes at the time.

Mr. R: He worked with you

Mr. G: As promotion

Mr. R: Would you say he was a good or bad influence on yourself and your group.

Mr. G: Very good, we were very limited to what we did until he came around.

Mr. R: You mean he was a good business influence.

Mr. G: Right

Mr. R: Would you say he had a sense of moral character in the sense?

Mr. G: My parents are very strict people and I am still living home with them now. He allowed Mr. Birch Carson as legal guardian on the road.

Mr. R: Your parents met and trusted him is that right?

Mr. G: Yes

Mr. R: Has he ever committed an immoral act that you know of?

Mr. G: Not to my knowledge

Mr. R: You told us of the fact that there was an opportunity for your self and Mr. Carson and somebody else to go into business down there is that still current and available?

Mr. G.: Absolutely yes.

Mr R.: And is that covered by the letter from the Magnolia Realty and the newsrelease?

Mr.?: .....newspaper clipping from the Daily Herald .....we rezoned the section of land on the Gulf Coast Strip.

Mr. R: Is there any arrangement made or is there any possiblity of arrangement being made for Mr. Carson to stay some place or live some place while he is down there trying to put a business together and try to get some money together.?

Mr. G.: My family yes, we have quite a large family. The Guill family

they are .....related in the community thereabouts and it is easy to find a place to stay and employment.

Mr. R.: Are you saying that your family will take the responsibility of taking him in?

Mr. G.: Yes if the parole was switched...

Mr. R.: Well assume the parole was switched

Mr. G.: If that was done yes.

Mr. R. I HAVE NO FURTHER QUESTIONS

Mr. Q: Is that all Mr. Rubin you want to make a summation or you have Mr. Sanchez there.

Mr. R.: No I am not going to present Mr. Sanchez. I would like to say in summation. I shouldn't be. I think that everybody here should be professionals,Certainly my self and the board and Mr. Burger I do think however that there seems to be a clash of nothing more at least life styles. And if perhaps there is some kind of hostility between Mr. Burger and Mr. Carson I don't know whose fault that is I assume when there is hostility both parties contributed to it whether they intended to or not I think that Mr. Carson certainly has been punished he has been in jail for 90 days. If of course there are any other charges that are going to be filed he will pay for those. I mean he is not disappearing he will be available to anybody who wants to charge him with anything, I think that you gentlemen ought to consider, and I know that you will, that if you are going to put him back on the street back out in the community that you would consider sending some place where he would get a new probation officer and a new start and also to a place where he can do business not New York where he obviously doesn't have any contact or where he doesn't know any people. Having orginally come from the Boston Area and having had some contacts in the Biloxi. Probably the worse place for him to be right now and certainly in terms of employment opportunities in general is New York City; I think if he going to get in trouble again this is the one place where he is bound to get in trouble and I would hope that you would give him an opportunity again on parole keepin in mind that he did "max out" as they say. The maximum time in jail permitted except that you permitt him to go to Biloxi and try to make a new start apparently are waiting and willing to help him Which would certainly ease the path for him.

Mr. Q.: Thank you

Mr. C. These people in Biloxi are really my family. I love them and they love me and why I don't know but.....It is the first time since I was 20 years old that I have had the opportunity to have somebody who gave a damn about my future and they are well thought of in the community his cousin is a State representative they are a reputable family the business opportunity still exist and the licensing and these employment factors have all been taken into consideration with an attorney down there and even with a criminal record am permitted to work in a discoteque in the State of Mississippi and ..... not be the license overt record and to make a long story short I would like very much the opportunity to be able to go down there. My Thanks.

Mr. Q.: Mr. Burger is there anything you have to say?

Mr. B.: There seemed to be some implication on Mr. Rubin's part that there was some personality conflict between myself and Mr. Carson. I tell you I have been on the job for eight years I think one of things that you are going to have to deal with is a little bit of hostility and little bit of whatever and take it as part of the job.

(Quirk and Carson talking at the same time -- could not understand)

Mr. B.: I can't recall holding anything personal against Mr. Carson If I felt there was something personal involved I would really give second or third thoughts.

Mr. Q.: Would.....you might even change supervisors.

Mr. B.: Well if you want to change PO's that fine.

Mr. B.: I am sure Mr. Luciano .....what other people call personallity conflicts in the office and the supervisors here are always are always entertaining suggestion the change in personnell or the change in PO's. Poeple's greviances in the Southern District of New York are always listened to, not only by the supervisor by the deputy or Mr. ------ Himself the door is always open to any parollee or probationer

Mr. Q.: .....This is getting far field from what we are talking about.

Mr. C.: My major concern is not with violating the law I don't choose to remain in jail I don't enjoy it I have never intended since being -released I have never done any thing that to my knowledge would bring me back and I went .....

Mr. Q: Alright if you will excuse us now we will discuss the case

Mr.Q.: We have two decisions for you both tentative Mr. Carson first is to revoke you mandatory release. The reason for that is that we find that you did fail to submitt the supervison report as required. Failed to report the change in residence as required and you also left the district without permission.

The secnnd decision that we have is to continue to expiration Mr. Carson because we feel your reales at this time would depreciate the seriousness of your mandatory release and promote disrespect for the mandatory release process and we do not think there is a reasonable probability at this time that you would conditions of your mandatory release. These are the reasons that we are----------
Again finally this the tentative decisions you will get the official decision which could be different from what we are giving you. You will get the official decision in about 15 working days I have already giving you the information as to how you can appeal it.

Mr. C. Thank you very much

Mr. Q.: Good Luck to you Mr. Carson

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FILED
U.S. DISTRICT COURT
Nov 6 4 54 PM '75
S.D. OF N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - x

UNITED STATES ex rel.
BIRCHEL LEONARD CARSON,

Petitioner,

-against-

LARRY TAYLOR, et al.,

Respondents.

- - - - - - - - - - - - - - - - - - - - - - - x

75 Civ. 4398

MEMORANDUM

#43355

FRANKEL, D.J.

For the guidance of petitioner and government counsel, the court records some questions that may be of interest at the hearing scheduled for 9:30 a.m. on November 11, 1975. These questions are not necessarily deemed decisive, or necessarily material, at this time. They are meant to outline some uncertainties and problems in the court's mind. Correction of mistaken impressions and illumination of the uncertain areas will be among the contributions petitioner may make for himself and government counsel may offer assistance upon. With these caveats, the questions are as follows:

(1) Exactly what is the purpose of the sealed papers submitted by the Government? (The court has not unsealed these, questioning whether they should be examined ex parte in this proceeding.)

MICROFILM
NOV 7 1975

(2) Since the Government invokes the transcript of the revocation hearing (Exhibit C to the affidavit of Alan Levine, sworn October 29, 1975), was it noted that page 16 is missing from the copy of the transcript given to the court? Was that page in the copy used by government counsel in preparing his brief and affidavit? Could the government's papers have been responsibly prepared in the absence of that page?

(3) The court will wish to have a copy of the violation warrant to be made part of the record.

(4) In view of the relatively modest violations charged and found, what is the supposed justification for continuing the petitioner to the expiration of his full 5-year sentence? How does this compare with the decisions made on similar violations in other cases?

(5) What was meant by the seemingly garbled observation of Hearing Examiner Quirk at the end of the transcript (Exhibit C supra) that "release at this time would depreciate the seriousness of your mandatory release . . ."?

The foregoing questions are not meant to be exhaustive. To repeat, they are essentially tentative.

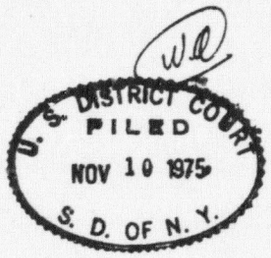
They do not foreclose other and different contentions the parties may deem appropriate.

Dated, New York, New York
November 6, 1975

Marvin E. Frankel
U.S.D.J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - X

UNITED STATES ex rel.
BIRCHEL LEONARD CARSON,

-v-

LARRY TAYLOR, Warden,
Metropolitan Correction Center
and JOHN T. CONNALLY, Chief,
Probation Officer, Southern
District of New York,

Defendants.
- - - - - - - - - - - - - - - - - X

AFFIDAVIT

75 Civ. 4398 (M.E.F.)

STATE OF NEW YORK )
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK )

ALAN LEVINE, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of THOMAS J. CAHILL, United States Attorney for the Southern District of New York and am fully familiar with the facts of this case.

2. On October 28, 1975 your deponent filed with the Clerk of the Court and hand delivered to Your Honor's chambers and the Metropolitan Correction Center the Government's response to the Petition for Writ of Habeas Corpus filed September 2, 1975 and the Amended Petition for Writ of Habeas Corpus filed October 3, 1975.

3. The Government's response consisted of a Supplemental Affidavit, Exhibits A and B, a Memorandum of Law, and a package of documents to be sealed by the court. Accompanying said papers was a letter addressed to the Court, a copy annexed hereto as Exhibit A, which stated inter alia that the transcript of the hearing denominated in the

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affidavit as Exhibit C was being prepared in Philadelphia, Pennsylvania and was not yet available. With the Court's permission the Government stated that it would file a copy of the transcript and serve a copy on the petitioner when your deponent received it.

4. On or about October 31, 1975 your deponent received a copy of the transcript from Philadelphia, as well as an affidavit of Mr. CurtisCrawford, Regional Director of the United StatesBoard of Parole, and immediately thereafter delivered said papers as described above. Said transcript was missing page 16; that page is now annexed hereto.

5. The Supplemental Affidavit and Memorandum of Law filed with the Court on October 28, 1975 were prepared with the assistance of copies of the cassette recordings made of the petitioner's parole revocation hearing held on September 24, 1975. Portions of the transcript were read over the telephone to ~~the petitioner~~ by a representative of the Parole Board as it was being prepared.

6. Your deponent advised Your Honor's law clerk upon delivering said papers on October 31, 1975 that he was in possession of a copy of the recording and would make it available to the Court, if the Court so desired.

7. Accompanying the Government's papers was an envelope of documents to be inspected by the court in camera and sealed. These documents were submitted to the Parole Board to be used in connection with the petitioner's parole revocation hearing and are the subject of one of petitioner's claims herein. In connection with the Government's response to that claim, these documents are provided for the Court's

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inspection and consideration of the questions of whether the documents were properly withheld from the petitioner. In our submission this constitutes a reason for in camera presentation that is on "all fours" with the in camera presentation of material for determination as to whether it comes within Title 18, Section 3500.

8. Attached hereto as Exhibit B is a certified copy of the Parole Violator Warrant.

Alan Levine

ALAN LEVINE
Assistant United States Attorney

Sworn to before me this

19th day of November, 1975

Jeanette Ann Grayeb

JEANETTE ANN GRAYEB
Notary Public, State of New York
No. 24-1441.75
Qualified in Kings County
Commission Expires March 30, 1977

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AL:dl

October 28, 1975

Honorable Marvin E. Frankel
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, NY 10007

Re: United States ex rel. Carson v. Taylor, 75 Civ. 4398

Dear Judge Frankel:

Pursuant to your Memorandum Order of October 21, 1975 the Government filed its additional papers today in the above-entitled action.

Accompanying the Government's Supplementary Affidavit and Memorandum of Law are two Exhibits. Reference is made in the affidavit to three additional exhibits: the transcript of the hearing, an affidavit of Mr. Curtis Crawford, and an affidavit of a representative of the Bureau of Prisons. Because of the intervening weekend and federal holiday on Monday, these exhibits which are being prepared in Washington, D.C. and Philadelphia, Pennsylvania have not yet arrived in New York. The Government expects them within the next day.

With your permission, upon arrival the Government will deliver one copy of each to the court and the petitioner.

EXH. A

BEST COPY AVAILABLE

In addition, the Government is submitting in camera in connection with its reply papers copies of the documents submitted to the Board of Parole by the Probation Office for the court's inspection.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: _____
ALAN LEVINE
Assistant United States Attorney

cc: Birchel Leonard Carson
03870-116
150 Park Row
Metropolitan Correction Center
New York, New York 10007

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# C E R T I F I C A T E

I, Janet VanWalraven, Acting Administrative Examiner for the Northeast Region of the U. S. Board of Parole, with official duties at Scott Plaza II, Industrial Highway and Tinicum Township, Philadelphia, Pennsylvania certify that the following attached instrument is an exact copy of the document relating to Birchel Leonard Carson, Reg. No. 03870-116 as is contained in the official file record at Philadelphia, Pennsylvania:

1. Warrant dated July 2, 1975.

In witness whereof I have signed this 7th day of November, 1975.

Janet VanWalraven

JANET VAN WALRAVEN
Acting Administrative Examiner
Northeast Regional Office
U. S. Board of Parole
Philadelphia, Pennsylvania 19113

EXH. B

Parole Form H-22
(Ed. Jan. 1966)
(Formerly Parole Form 20a)

A 107

UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
WASHINGTON, D.C. 20537

USPHS Atlanta
SE Region

RECEIVED
AUG 13 1975
UNITED STATES BOARD OF PAROLE

# WARRANT

**For Retaking Prisoners Mandatorily Released Under Authority Section 4163, Title 18, U.S.C.**

**To Any Federal Officer Authorized to Serve Criminal Process Within the United States:**

WHEREAS, BIRCHEL LEONARD CARSON, #03870-116 was sentenced by the United States District Court for the Southern District of New York to serve a sentence of 5 years, ..... months, and ..... days for the crime of Transport Forged Checks Interstate and was on the 30th day of January, 1975, released (in accordance with Section 4163, Title 18, United States Code) from the Community Treatment Center, New York, N. Y., with 649 days remaining to be served.

AND, WHEREAS, reliable information has been presented to the undersigned Member of this Board that said prisoner named in this warrant has violated the conditions of release;

NOW, THEREFORE, this is to command you to execute this warrant by taking the above-named, wherever found in the United States, and hold him in your custody until he has been afforded a preliminary interview with a person designated by the Board of Parole, and until authorized to transport him as ordered.

WITNESS my hand and the seal of this Board this 2nd day of July, 1975.

Curtis C. Crawford
*Member, U.S. Board of Parole.*

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**WARRANT** for return of mandatorily released Prisoner .....

No. .....; .....
(Institution)

**UNITED STATES MARSHAL'S RETURN TO UNITED STATES BOARD OF PARole**

Sou District of Miss ss:

Received this writ the 14 day of July, 1975,

and executed same by arresting the within-named Birchel Leonard Carson

this 14 day of July,

1975, at Gulfport, Miss and committing him to

Harrison County Jail

Army Rhoden
(U.S. Marshal)

By Wm Pitman
(Deputy Marshal)

Further executed same by committing him to .....

at ..... on ....., 19....,

the institution designated by the Attorney General, with the copy of the Warrant and Referral Sheet.

.....
(U.S. Marshal)

By .....
(Deputy Marshal)

NOTE.—The original of this warrant is to be returned to U.S. Board of Parole, Washington, D.C.

PARTIALLY EXCUTED this warrant by taking into Custody the within named on 8-6-75 and on 8-6-75 delivered him to U.S.P. ATLANTA GA.

M. F. ROUSSEAU
U.S. MARSHAL
By Deputy

opened in Biloxi. Due to the fact that he and I virtually know all the musicians in the area it seemed like a logical arrangement whereby we could get a club opened we could definitely fulfill the band requirement relatively easily. So, after talking with him on the phone, I did make the effort to reach Mr. Berger and was unable to reach Mr. Berger was unable to do so, mailed the letter, move and then went to Biloxi, Miss. where engaged in some negotiations to rent a building and we obtained some financial aid from some merchants there and we petitioned the Biloxi city counsel for zoning and here is a letter from an interested party there.

Q: You went down there for business purposes and . . .

Mr. C: I certainly was not hiding, I was using my own name and living in the open .

Q: What were the circumstances of you being picked up?

Mr. C: The day I was arrested, I was arrested strangely enough at Mr. Gill's home whose address appears in this letter which Mr. B allegedly didn't receive.

Q: You were arrested by whom?

Mr. C: By the FBI

Q: On the basis of the violation warrant

Mr. C: I assumed, they didn't have the warrant at that time.

They said I was arrested as a parole violator.

Q: You were working with Mr. Gill where you down there?

Mr. C: Mr. Gill and a number of other people, at this point I would like to have Mr. Gill get on the record.

Q: Alright. You are saying Mr. Gill invited you down at least to investigate the possibilty of business opportunity. Mr. Gill is here on the basis to verify the fact that he had contacted you from Biloxi and he has know knowledge whether you had permission or not

Mr. C: Of course not , but he did on one occasion witness my attempt. to call Mr. B. from Miss.

Mr. Gill: ,May I say something when he had gotten down I had asked him knowing of his record in the past, I had asked him if he was here rightfully and legally and he had said Yes, he had mailed a letter to Mr. Berger and that he had tried to call him a few days after he had gotten there, and that we were trying to open up a club.

Mr. Q: Did you see him make the call?

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FILED
JAN 23 1976
S. D. OF N. Y.

75 Civ. 1398 Frankel

AFFIDAVIT

I, CURTIS C. CRAWFORD, having been duly sworn depose and state as follows:

I am the Director of the Northeast Region of the United States Board of Parole with offices at Scott Plaza II, Industrial Highway, Philadelphia, Pennsylvania. This affidavit will set forth the general manner in which the Board conducts revocation proceedings with particular reference to the resources and schedule of hearings of the Northeast Region.

The procedure by which a parole violator warrant may be issued is set out at 28 C.F.R. §2.49. Only Board Members may issue such warrants upon a showing of satisfactory evidence of parolee's violation of any of the conditions of his release. This is to be chiefly distinguished from the procedure common to the state parole systems described in Morrissey v. Brewer, 408 U.S. 471, 485 (1972), in which a warrant is issued at the direction of a parole officer. Under the Board's rules, a U.S. Probation Officer supervising a parolee is restricted to reporting suspected violations of parole to the Board. The appropriate regional office then examines the report to determine if there is sufficient evidence to arrest and detain an alleged violator.

Upon the arrest of an alleged violator by a U.S. Marshal, the alleged violator is given a copy of the warrant application detailing the charges describing the evidence upon which the warrant was issued, and informing the alleged violator of his right to a preliminary interview.

EXHIBIT D

(17)

A preliminary interview by a probation officer other than the supervising officer is held as promptly as possible after a warrant is executed and an alleged violator is taken into custody. Generally the preliminary interview will occur within a week after arrest but the hearing may be held later if an alleged violator is arrested in a distant district in order that the warrant, warrant application and other relevant documents relating to the alleged violations may be sent to the interviewing officer prior to the interview.

The purpose of the preliminary interview is to determine whether probable cause of a violation has occurred. It is primarily designed to permit the alleged violator to present his version of the events underlying the charges in the warrant application which details the alleged violations.

The report of this preliminary interview including recommended findings of probable cause is sent to the appropriate Regional Director who determines if probable cause of a violation exists and whether the parolee should be reinstated to supervision or held in custody pending completion of a revocation hearing.

Revocation hearings may be held either at local, state or federal institutions depending upon an alleged violator's request, the nature of the violation and available facilities. Inasmuch as examiner panels are scheduled to conduct hearings at certain federal institutions each month in their region, revocation hearings are conducted at those institutions when a panel is present and the alleged violator's case is scheduled on the hearing docket.

The Northeast Region of the United States Board of Parole is comprised of the following states: Maine, Vermont, New Hampshire, Connecticut, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia. Federal institutions in the Northeast Region which are visited by examiner panels on a regular basis include: the U.S. Penitentiary, Lewisburg, Pennsylvania, the Federal Correctional Institution, Danbury, Connecticut, the Federal Reformatories at Petersburg, Virginia and Alderson, West Virginia, the Federal Youth Center, Morgantown, West Virginia, the Metropolitan Detention Center, New York, New York, and the Federal Prison Camp, Allenwood, Pennsylvania.

The Northeast Region has four examiners permanently assigned to conduct hearings at the above mentioned facilities. Examiner panels at hearings are composed of two hearing examiners.

In July 1975, one examiner panel of the Board conducted a local revocation hearing in Buffalo, New York on July 1, 1975, conducted hearings at Morgantown, West Virginia from July 6-9, conducted hearings at Alderson, West Virginia from July 10-18, and conducted local revocation hearings near Philadelphia, Pennsylvania and prehearing record reviews for prisoners pursuant to 28 C.F.R. §2.14(a) at the Regional Office from July 21-31. Another panel was on annual leave until July 18, 1975. Thereafter the panel conducted hearings at Petersburg, Virginia from July 20-31.

In August both panels conducted hearings at Lewisburg, Pennsylvania from August 3-13 and at Allenwood, Pennsylvania from August 13-15. Both panels subsequently conducted prehearing record reviews at the Regional Office from August 15-20. On August 21, both panels conducted hearings at Danbury, Connecticut until August 29. One panel during that time travelled from Danbury to the Metropolitan Detention Center, New York on August 27, 1975 to conduct scheduled hearings on that date.

I have been informed that Mr. Birchel R. Carson, Register No. 03870-116, has complained that the revocation hearing conducted in his case was not held within a reasonable period of time after his arrest on the violator warrant. Mr. Carson arrived at the New York Metropolitan Detention Center on August 15, 1975. The Northeast Region learned of his presence at that facility on August 20, 1975, through a teletype sent by the U.S. Marshal for the Southern District of New York. Although, as mentioned above, hearings were conducted at the Metropolitan Detention Center on August 27, 1975, Mr. Carson's case was not scheduled for that time. Due to his recent arrival in New York, and the late notification by the U.S. Marshal, Mr. Carson was informed by Mr. John F. Sicoli, Senior Analyst, by letter, dated August 21, 1975, that his case would be heard on September 24, 1975, the next occassion that an examiner panel would conduct hearings at the Metropolitan Detention Center.

This was done to permit Mr. Carson sufficient time to prepare for the revocation hearing by securing the assistance of counsel and requesting the attendance of both adverse and voluntary witnesses to testify regarding the alleged violations.

Curtis C. Crawford

CURTIS C. CRAWFORD
Director
Northeast Region
United States Board of Parole

Washington,
District of Columbia.

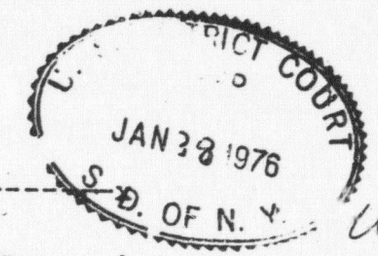
Subscribed and sworn to before me this 28th day of October, 1975.

Shirley O. Stutely

Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK




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BIRCHEL LEONARD CARSON,

Petitioner,

v. : 75 Civ 4398

LARRY TAYLOR, WARDEN and
JOHN T. CONNALLY,

Respondents.

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November 11, 1975
9:45 A.M.

B E F O R E :

HON. MARVIN E. FRANKEL,

District Judge.

A P P E A R A N C E S :

BIRCHEL LEONARD CARSON,
Pro se.

THOMAS J. CAHILL,
United States Attorney for the
Southern District of New York
ALAN LEVINE, ESQ.,
ROBERT HEMLEY, ESQ.,
Assistant United States Attorney

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THE CLERK: Matter of Birchel Leonard Carson v. Larry Taylor, et al.

Petitioner ready?

MR. CARSON: Yes.

THE CLERK: Respondents ready?

MR. LEVINE: Government is ready, your Honor.

THE COURT: Mr. Carson, you do not have a lawyer because of what, you ran out of money or something?

MR. CARSON: Yes, sir, that is correct.

MR. LEVINE: Your Honor, before we begin this morning, the government served an affidavit yesterday upon the court, filed it with the court, entered to serve Mr. Carson.

I asked Mr. Carson this morning if he received a copy of it and he has not, and I have offered him my copy to read, and he declined to take it this morning.

THE COURT: Why didn't you take it?

MR. CARSON: I didn't know if it was proper for me to take it from him or from the Court.

THE COURT: Well, take it.

MR. CARSON: Take it? All right.

THE COURT: And read it.

All right. You have read that?

MR. CARSON: Yes, your Honor.

THE COURT: There was a typographical error in paragraph 5. I take it that has been corrected in the copy that you gave to Mr. Carson, Mr. Levine.

MR. LEVINE: Yes, it has, your Honor.

THE COURT: A somewhat informal procedure for correction on an affidavit, but I assume there is no problem on that.

MR. CARSON: My copy shows "your deponent."

THE COURT: Yes.

I would like to have made a part of this morning's record the application for the violator bond. Where is that?

MR. LEVINE: Your Honor, the application for the violator bond?

THE COURT: Do you have it, Mr. Carson?

MR. CARSON: I can furnish the Court with a copy of the warrant application and the two charges that were alleged.

THE COURT: Mr. Levine seems to have found one or two. Let's see it.

All right. Suppose we make this warrant application Court Exhibit 1 in this proceeding.

(Court's Exhibit 1 marked)

MR. CARSON: Your Honor, before we go any

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further, I would like to ask a question.

In the government's papers, which -- the second set -- which were filed late and I got after the deadline you had given them, Exhibits A and B were included and we were told that Exhibit C, D and E were to follow.

Now, I got Exhibits C and D on Saturday, November 1st, at 9:00 p.m., but I haven't received Exhibit E as yet, which was supposed to be an affidavit from some Bureau of Prisons employee.

As of this point, the government's papers are still incomplete, and I know nothing of the law, but I have a fair command of English and I'm wondering how many times myself and this Court are supposed to wait for the government to complete their submission.

THE COURT: Mr. Levine?

MR. LEVINE: The government's papers are complete now, your Honor.

THE COURT: What is Exhibit E?

MR. LEVINE: That affidavit, at the time it was prepared, it was thought that the government would receive an affidavit from a representative of the Bureau of Prisons, but that affidavit will not be forthcoming. It is unnecessary.

THE COURT: You mean there is no Exhibit E?

MR. LEVINE: That's correct, your Honor.

THE COURT: Have you before this minute told that to Mr. Carson so that he would know where he stood?

MR. LEVINE: No, I have not, your Honor.

THE COURT: Was it not your feeling that he and the Court were entitled to be notified of that?

MR. LEVINE: I expected to do that this morning, your Honor.

THE COURT: You should have done it sooner. And what has characterized this proceeding from the day Mr. Carson was picked up in Mississippi very long ago until now has been a kind of leisurely and casual view of time requirements and notification requirements and a fairness requirement to a man who is locked up, and I don't believe these things are necessarily characteristic either of the United States Board of Parole or of the United States Attorney's office for this district, but they have been characteristic of the way this particular proceeding has been conducted throughout, and I think that is both deeply regretable and very material on the ultimate issue to be decided by the Court in this proceeding.

I hope that this kind of neglectful and careless conduct of this matter will cease from this instant, because the matter is not ended, and it will have to be decided

here, and perhaps on a higher level, but I hope that the government in all its branches concerned with this matter will work with speed and precision and concern from now on. And I hope you will see to that, Mr. Levine.

MR. LEVINE: Yes, your Honor.

THE COURT: That is the answer to your first question, Mr. Carson.

MR. CARSON: Thank you, your Honor.

THE COURT: Now, instead of having set speeches, especially in the absence of counsel for Mr. Carson, I think the most useful things that can be done for the Court, in an effort to help me decide this matter fairly to both sides, is for me to put such questions as I have heretofore conveyed to you and see that I have an approximate answer to each one of them, and then for you to supplement, both sides, the things that I have been told before today and in answer to these questions, and then for me to take and decide it.

First off, there is some references in the papers to the right of an appeal within the parole hierarchy. I have the impression that that right has not been exercised in this case; is that correct, Mr. Carson, or not?

MR. CARSON: Yes, your Honor, that is correct,

and the reason that I chose to submit an amended petition for writ of habeas corpus to the Court in lieu of exercising that appellate procedure is about threefold.

First of all, it is a most time-consuming process involving, first, an appeal to what is called the Regional Board or the Northeast Regional Office, which has an acronym of NERO in Philadelphia, and then after that should that appeal be upheld, of the initial revocation, then to Washington.

The whole thing has been known to take anywhere from eight to twelve months. At the end of twelve months, I would have served the sentence, the remainder of the sentence for which I have allegedly been violated here.

Therefore, I took the unusual step, because I think an intolerable delay had already occurred between the time I had been arrested and the time of my hearing, and I don't feel that -- again, I don't know the law, but it seems like perhaps maybe it is not in compliance with Morrissey v Brewer, but in addition to that, was the fact that I knew that in the future certainly an additional year on top of the three-and-some-odd months that I had been in custody would certainly be outside the time provisions that the Supreme Court had envisioned in their

decision in Morrissey v Brewer.

So in order to bring the matter to a speedy decision, I have submitted an amended petition to this Court.

THE COURT: If you are forced to serve to expiration, when will your sentence end?

MR. CARSON: I can only give you an estimate because I have asked time and time again for my records at the Correctional Center over there and they have not given me an exact date, but they have estimated somewhere in the month of October of next year.

THE COURT: 1976?

MR. CARSON: '76.

THE COURT: That would mean you would be the entire sixty months.

THE COURT: Sixty months.

MR. CARSON: If I may, for some background, so that the Court will understand exactly what my situation is, I served -- I got a sixty month sentence, a five year sentence, I went to Lewisburg and I was there some -- about twenty-eight months during which time I participated in a college program and earned three semesters of credits.

At the end of that time, I was transferred to Allenwood, the minimum security prison on camp in order

to finish my two year degree program by going to college during the day and coming back to the institution at night.

I spent eight months there and then I was released to the Community Treatment Center in New York to attend Columbia University, where I earned a scholarship, and I attended the semester there and then was released from the Half Way House, the CDC, on January 30th of this year, comprising a total of thirty-nine and a half months, which is with all extra good time that you can earn plus your statutory good time, the minimum of time you can serve on a sixty month sentence. I maxed out the sentence, in other words.

THE COURT: You do not mean the minimum of time.

MR. CARSON: Excuse me, I meant the maximum time, right. In other words, I earned the maximum amount of good time and was released at that point, about thirty-nine months.

THE COURT: But as I understand the law, and you do not need to be modest about your knowledge of law with me any more, you know enough law to have presented a difficult and interesting case here, I would prefer you have a lawyer just because it makes life easier for me,

but we can discuss the law together -- as I understand it, then, the effect of your being required to serve to expiration is that the benefit of that good time is lost.

MR. CARSON: Completely of no consequence, and the irony of it is --

THE COURT: Wait just a second. I see a head shaking at the government's table. Is that not correct?

MR. LEVINE: It is my understanding, your Honor, that while the petitioner has been recommitted for the maximum term, that he would still be entitled, as of the commencement of that term now, to receive credit for good time in any other credits that are incumbent upon fulfilling the remainder of the time.

THE COURT: Well, he has lost something to a substantial degree.

MR. LEVINE: I can find out. I'm not an expert in that.

THE COURT: He didn't get any parole, did he didn't make parole, he maxed out, the way we say, which means that he served the maximum time they could hold him after giving him credit for his good time and other statutory reductions, and didn't parole release him at all.

I understand the statute gives the parole board

authority nevertheless to deal with him as a person on parole subject to parole conditions, but in looking at the fairness or possible unfairness of what has been going on in this case, I don't suppose the Court is compelled to ignore realities of this nature and see how the parole board generally has dealt with this person and what he is up against.

MR. LEVINE: Your Honor, I would just like to make two points: One is that it is my understanding that Mr. Carson didn't make parole or parole was denied --

THE COURT: I agree.

MR. CARSON: -- at an earlier time following a hearing of or at least an examination that is normally conducted.

Secondly, I am told that in being recommitted for a maximum term that he will be entitled to a review for parole at some point during the remainder of that term. So that he is not necessarily committed to the remainder of the term for each day.

THE COURT: He is not necessarily, but you wouldn't want to invest a lot of money, even which you got out of New York City bonds, in the prospect of his getting generous treatment from the Board of Parole in light of what has happened to him thus far, would you?

MR. LEVINE: Your Honor, I cannot predict personally what the Board of Parole will do and what circumstances will come about.

THE COURT: Okay.

Now, Mr. Carson, in attempting to justify his failure to pursue the appeal within the parole system, has stated, Mr. Levine, that it takes many months or may well take many months for that process to be completed; is that correct or not?

MR.LEVINE: Your Honor, I don't know as a matter of fact what the average length of time is for an individual to proceed through the administrative remedies. I know that the statute provides, the regulations provide, that an appeal to the Regional Director can be made or must be made within thirty days and I would expect that the Regional Director would make a decision within a reasonable time.

THE COURT: I know, but you are relying on the failure to exhaust as one of your points here.

MR. LEVINE: That is correct, your Honor.

THE COURT: Shouldn't you know how exhausting those remedies are before you come into the courtroom? Isn't it relevant in your judgment for a man sitting in prison whether it takes an hour or six months for him

to complete that appeal through the Parole Board?

MR. LEVINE: Well, I can find that out.

THE COURT: I really believe, Mr. Levine, that it should have been found out before you came here to help me this morning.

I would expect you to let Mr. Carson and me know by tomorrow morning in an affidavit some reasonable approximation of the government's position on the question he, as a layman, has raised, which seems to me to be an obvious question in response to the government's claim he didn't exhaust these remedies while he sits in the Metropolitan Correction Center. I will expect that by tomorrow.

Now, Mr. Carson?

MR. CARSON: If I may, concurrent with the time factor, prompting my amended petition to this Court was the basic tone and handling of the parole revocation hearing itself, and I felt that if your Honor were to actually hear the tape cassette and hear the tones that were being used and the general attitudes of the persons participating, or second best be able to review the transcript, that perhaps the Court would realize that notwithstanding the time factor involved, were I to follow an administrative procedure, the violations,

in my opinion, rest not with myself but rather with the handling of the parole hearing itself, and I felt they were of such a blatent nature that I had to call them to the attention of the Court. So that was the --

THE COURT: Well, I have read that transcript, page 16 of which I had to skip because I didn't get that --

MR. CARSON: Neither did I, your Honor.

THE COURT: -- until this morning. And I have expressed the Court's wonderment about the government's relying on a transcript when the government counsel has not even had or been able to give to the Court and entire copy of it.

I am not overwhelmed with a sense of fairness and rationality in the proceedings as they read, but I accept the petitioner's suggestion and I will ask the government, which has volunteered this, to give me the cassette this morning and some equipment to play it on; and with the consent of both sides, if I have it I will listen to it in chambers this morning.

Is that agreeable to you, Mr. Levine?

MR. LEVINE: Absolutely.

THE COURT: And to you, Mr. Carson?

MR. CARSON: Absolutely.

MR. LEVINE: I would like to make one point

known for the record.

There is a ten second or a fifteen second gap on one of the sides of the tape.

THE COURT: Not eighteen and a half seconds?

MR. CARSON: Eighteen and a half minutes, your Honor.

MR. LEVINE: No. And I think I caused that gap, your Honor, through my lack of understanding of how the machine worked. It was not until after I had listened to the cassette recording completely at one time. So you would have to use your transcript to follow that small portion that is erased and I can get the original of those cassette recordings from Philadelphia to substitute for that gap if you find it necessary to listen to that portion as well.

THE COURT: Well, get it. Order it up today, and have it delivered to my chambers tomorrow morning. But, in the meantime, this morning deliver the one you have and the equipment for playing it.

MR. LEVINE: Your Honor, I will hand to the Court now --

THE COURT: What is it, two cassettes?

MR. LEVINE: It is, your Honor, marked Government's Exhibit 1. And I will bring up to your chambers

this morning sometime, or as soon as I can get my hands on one, a recorder for you to use.

THE COURT: Okay.

MR. CARSON: Your Honor --

THE COURT: Yes, Mr. Carson.

MR. CARSON: -- it may not be material at this point but I would like to mention it for future reference:

During the process of being involved in the hearing, it seems to me there were more than two cassettes, and -- because I remember having to stop several times while my parole -- my caseworker in the institution replaced the cassettes, and I am confident there were more than two cassettes.

THE COURT: Look, you have the transcript.

MR. CARSON: I have that.

THE COURT: Does that seem to you to cover it?

MR. CARSON: Well, I would like to comment on the fact that there is a tremendous use of ellipsis in here.

THE COURT: I understand that.

MR. CARSON: And to that end, taking that into consideration, and the missing page, I would say it was relatively accurate.

THE COURT: We have the transcript, too, so

as we listen to the cassette, we will know whether it runs from the beginning to the end --

MR. CARSON: Fine.

THE COURT: -- skipping what may be erased in the middle because we are not trained in law school in the effective handling of cassettes, so we have these accidents.

There was submitted to me by the government an envelope of papers, sealed. The envelope is still sealed, not because I am fearful of its contents, but because I have never been given clearly to understand why it was given to me and why it is sealed, and I want the record to show my acknowledgment that this may reflect, and I am not being sardonic, a failure of comprehension on the Court's part, but whatever the cause, I don't understand the place of this envelope in this proceeding and I don't find anywhere in your papers, Mr. Levine, a lucid account of what it is for.

Now, please tell me on the record what this is for and what place it has in this proceeding.

MR. LEVINE: Your Honor, the documents that are presented to you in that envelope, as stated in the government supplemental affidavit, were the --

THE COURT: Which affidavit, the one I got

today?

MR. LEVINE: No, the supplemental affidavit, your Honor.

THE COURT: Dated what?

MR. LEVINE: Excuse me, your Honor. The initial reference to the sealed envelope of papers is in the government's letter to the Court of October 28th, which accompanied the supplemental affidavit and memorandum of law served on your chambers.

THE COURT: Let me find that.

MR. LEVINE: I can hand up a copy of it, your Honor.

THE COURT: All right, hand up a copy.

MR. LEVINE: That's my only copy, your Honor. I would like to read from it, if I may, your Honor. The last paragraph.

THE COURT: Yes. You may read from it. Do you want me to read you the last paragraph?

It says: "In addition, the government is submitting in camera, in connection with its reply papers, copies of the documents submitted to the Board of Parole by the Probation Office for the Court's inspection."

That is what it says.

MR. LEVINE: Pardon?

THE COURT: That is what it says.

MR. LEVINE: Your Honor, in the government's affidavit which was served on the Court yesterday, after you raised this question in your memorandum dated November 6, 1975, the government stated at paragraph 7:

"Accompanying the government's papers was an envelope of documents to be inspected by the Court in camera and sealed. These documents were submitted to the Parole Board to be used in connection with the petitioner's parole revocation hearing and are the subject of one of petitioner's claims herein.

"In connection with the government's response to that claim, these documents are provided for the Court's inspection and consideration for the questions of whether the documents were properly withheld from the petitioner.

"In our submission this constitutes a reason for in camera presentation that is on all fours with the in camera presentation of material for determination as to whether it comes within Title 18, Section 3500."

To further explain the government's position, your Honor, it is the government's position that the documents that were in the possession of the Parole Board for a variety of reasons, as stated in the government's

papers, were not shown to the petitioner and there was no obligation to show them.

And in considering whether or not the petitioner was denied his due process, for the Parole Board to have denied him access to those documents it would seem to the government that you would want to examine what actually was withheld from the petitioner in assisting you in making that decision.

THE COURT: Let's go back. Were these relied on by anybody as grounds for the revocation of his parole, as I will call it?

MR.LEVINE: Some of the documents were, your Honor.

THE COURT: Where does it say that? Who said that? I don't find it in the transcript of the proceedings, I don't find the hearing officer saying or making any reference to them or saying he is relying on them to revoke, but if he does, is it your position that under Morrissey v Bewer, and whatever other law there is, the Parole Board may base its revocation decision in part on ex-parte information not revealed to the parolee?

MR. LEVINE: Let me correct a word that I used, your Honor, in response to your question.

The government is not contending that the

Parole Board based its decision on documents that it received. The Parole Board used certain documents that it received from the probation officer to inquire of the petitioner of his activities in the community. The Parole Board didn't use any documents that it didn't question the petitioner about, but basically used the documents that it had in its possession to inquire of Mr. Carson of certain of his activities.

And I use for an example, your Honor, page 6 of the transcript where -- excuse me, your Honor, let me find the spot -- your Honor, I'm having some difficulty finding it now, but at one point in the record Mr. Quirk is inquiring of Mr. Carson concerning the Canadian matter, so to speak, and at that point in the hearing Mr. Quirk refers to a document which he has in his possession and says something to the effect that "Well, I'll show you here what I have."

MR. CARSON: May I object, your Honor?

THE COURT: No, object later. Let him make his argument.

MR. CARSON: Thank you.

MR. LEVINE: And it is that kind of reference that the Parole Board used the documents for.

The second group of documents --

THE COURT: Let's go slowly, Mr. Levine. If as a hearing officer or lawyer or judge you refer to materials as a basis for questioning somebody, and if you yourself are the deciding person, isn't it fair to say that one of the things that will go into your decision is the material in that document that you are using in that hearing?

And isn't it clear to that extent, then, that the parole hearing officer relied on that or referred to that as among the materials used in the decision he reached?

Do you have any doubt about that?

MR. LEVINE: Your Honor, we have Mr. Quirk here.

THE COURT: I don't care whether you have Mr. Quirk here. I am deciding this case on a record. I don't want him to testify now in a de novo proceeding when I am reviewing what the Parole Board did. I am asking you as a lawyer and an officer of this court, having in mind the cases that say that you must not ask questions in the grand jury based on wiretap information because you are not supposed to use it, isn't it clear to you that if you refer to papers in formulating your questions and your thoughts in the course of the hearing that those papers

become part of the materials that affect your ultimate decision one way or the other?

Do you have any question about that?

MR. LEVINE: Well, no, your Honor.

THE COURT: So isn't it clear that the position is, and that is why I have not opened this envelope, that this envelope, which I will now have marked Court Exhibit 2 in this proceeding, leaving it sealed, contains papers that were never shown to this petitioner, that were part of the materials to which the hearing officer had reference in reaching his decision; isn't that clear?

MR. LEVINE: Your Honor --

THE COURT: I want the record to show your long hesitation in repeating your answer to that question, but now I want an answer.

MR. LEVINE: Your Honor, the documents to which I answered yes to that question, most of those documents were at one time or another in the petitioner's possession.

Secondly, the documents --

end take
followed
by RM

THE COURT: Why are they given to me in a sealed envelope, then?

MR. LEVINE: Your Honor, I have presented to you in an envelope all of the documents that were used by the parole board in connection with its hearing here, and the government has not sought to pick and choose --

THE COURT: Look, Mr. Levine, your affidavit, which you just reread for me under oath, and I have given you a lot of time to go back and redo stuff in this case, and you are not getting any more time, because this man is sitting in jail, your affidavit and your letter describe that envelope as containing documents which "were properly withheld from the petitioner."

And now you stand up, because of the drift of the argument, and you say most of them he had. Now, I'm just not going to let the government do this to the judge of this court or to a man in jail, because the time is going to come for a decision, and the decision, I think is going to be that we are going to have to let this man out of prison pretty soon, because you can't keep people locked up on the basis of procedures that descend to this level of uncertainty and slovenliness.

MR. LEVINE: Your Honor, if I may correct an impression in the record. The government does not contend

that the substantial portion of the documents which are in the envelope were at one time in the petitioner's possession. The documents basically break down into two areas: those documents which are basically factual documents, copies of checks, copies of letters, copies of unpaid bills which were received by the probation officer in the course of his supervision of the petitioner, and were provided for the parole board prior to the hearing.

The second group of documents in the envelope, your Honor, are evaluative summaries and letters, interagency letters from the probation officer to the parole board, which are basically evaluative summaries.

With respect to the first group of documents, your Honor, the government argues that while the documents were not actually shown to the petitioner, those that were used by the parole board in connection with the hearing were explained to the petitioner, that he have an opportunity to examine the witnesses himself with respect to the substance of those issues, and that upon an examination of the actual documents it would reveal that the petitioner was not prejudiced in any way, because in fact, one or two of those documents, your Honor, were actually documents that the petitioner handled in the course of his activities while he was out on parole.

That, I think, gives you a perspective of what is in the envelope.

The government does not contend that everything in that envelope the petitioner had at one time or another, and that they were deliberately withheld from him at the hearing, and he was not given an opportunity to inquire into the substance of the material in those documents.

That is not the case, your Honor. And I don't think the petitioner was denied any due process in his failure to actually read what was in the documents because the documents that Mr. Quirk used at the hearing he explained to the petitioner and I think the record makes that clear.

THE COURT: And you, as a litigant, would feel contented if the judge were using documents to question witnesses and you said, "Judge, I would like to look at that document," and the judge said, "You know, it is enough if I just explain it to you," you would be satisfied with that, would you? As counsel to one side in a litigation involving something less important than whether you stay in jail?

MR. LEVINE: Your Honor, the government does not contend that it was not important at the hearing. But I think the law is clear in this area that a parole revocation hearing while important to the petitioner no doubt is not an adversarial proceeding and is more of a fact-finding and

informational proceeding, and the fact here that in this case the parole board didn't actually hand over all of the documents to the petitioner but instead inquired into the subject area and explained the documents that they were using to him I think is sufficient under the present state of the law.

THE COURT: Let me have your position. You say a parole revocation hearing is not an adversarial proceeding, and would you cite the authority on which the government relies for that portion?

MR. LEVINE: Morrissey v. Brewer.

THE COURT: And Morrissey v. Brewer teaches you that; that's right? It is not adversarial; is that correct?

MR. LEVINE: That's correct.

THE COURT: Okay. Mr. Carson, you have been jumping up and down. Do you want to comment on any of this?

MR. CARSON: A number of things I would like to call to the attention of the Court.

I'm sure you are aware of it probably, but, nonetheless, the two charges on the warrant application relate to, No. 1, a failure to submit a --

THE COURT: I note it.

MR. CARSON: And No. 2, changing an address. And yet the information about which this dialogue was just held related to neither of these two charges, and it is precisely

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for that reason that I petitioned this Court, because I felt that the material involved, which I didn't have an opportunity to examine, and the only person involved in the material was the parole officer, Mr. Berger, certainly the principals themselves were not here for me to cross examine, as Morrisseey V. Brewer provides in sub-section D, 92 Supreme Court Reporter, page 2604. The only person I could cross examine, so to speak, was Mr. Berger, and he alone had the physical evidence in front of him.

So this is basically the reason for my petition to the Court. And the irony of it is that the U.S. Attorney just alluded to the fact that the material is in two sections, one of which is official reports from within the probation office. And on Thursday, August 21, I wrote a letter to the Chief U.S. Probation Officer, witnessed the mailing by my case worker at the Metropolitan Correctional Center and asked for documents under the Freedom of Information Act pursuant to the upcoming parole hearing which was to be held on September 24, and I have a copy of that letter for the Court, if I may submit it.

I specifically asked for, No. 1, "copies of all reports, letters, notes and communiques made by you or members of your staff specifically but not limited to Mr. Wilson and Mr. Berger," who were my case workers, "regarding

me between February 1, 1975, and the present date, including those to both private individuals or firms as well as to all other U.S. or state governmental agencies."

"2, copies of all employment contracts and/or letters verifying Mr. Carson's employment either submitted by me or on my behalf from February 1, 1975, to the present date.

"3, specifically, a copy of the report sent to the U.S. Board of Parole recommending that my parole by violated.

"4, copies of any and all other reports made by you and your staff concerning me to the U.S. Board of Parole."

And if you like, I will submit a copy of that letter to the Court.

THE COURT: Well, you may hand it up. We will call it Defendant's Exhibit A. Is that an extra copy?

MR. CARSON: It is. In conjunction with that are copies of letters to a parole officer, Mr. Tyne, in the White Plains office, to the Chief U. S. Probation Officer in the District of Massachusetts, and to the Community Treatment Center here in New York City asking for Freedom of Information Act material.

xx (Defendant's Exhibit A marked for identification.)

xx (Court's Exhibit 2 marked for identification.)

MR. CARSON: I have a copy for the government, too.

THE COURT: Mr. Carson, do you have a position on whether I ought to look at the papers that are in that sealed envelope?

MR. CARSON: Yes, your Honor.

THE COURT: What is your position?

MR. CARSON: My position is that I feel they are extraneous to the two charges on the parole violation warrant.

THE COURT: Look, since you are not a lawyer, let's talk about it.

MR. CARSON: Okay.

THE COURT: On the one hand, if I look into them they may be innocuous. And then I would have to say well, they didn't hurt you.

On the other hand, if I look into them, they may be devastating, in which event for the hearing officer to look at them and not show them to you and give you a chance to answer them might arguably be a mark of severe unfairness.

Now, if we leave them sealed at your instance, a lawyer might say well, we ought to take the worst inference from that against you, and if you reason it the way I have been thinking out loud, perhaps your position

ought to be that I should look at them for better or worse.

MR. CARSON: All right, I can --

THE COURT: I am not your lawyer.

MR. CARSON: I understand that and I appreciate your guidance.

THE COURT: I am not even giving you guidance, I am trying to think my way through to what is a fair way to handle this.

I think what the result is, having been given them, I ought to look at them.

MR. CARSON: May I make one other comment? I agree with that, and to that end I would like to cite from the government's brief, their memorandum of law in support of their opposition, and on page 6, under point 1, about halfway down they state: "However, once the Board has determined that a violation has occurred it still must determine whether the violator is a good parole risk; and in connection with that decision the Board may consider extenuating and mitigating circumstances."

Now, again, I am not a lawyer, but I looked up in Black's Law Dictionary to see if the legal definition is any different than that in Webster's, and extenuating and mitigating certainly are not prosecutorial and damaging.

THE COURT: But they can consider both. I don't

think --

MR. CARSON: The only point I would like to make is definitely that information cannot be considered, extenuating or mitigating.

THE COURT: All right. Now, I don't think it is a matter of great importance, and hearing officers don't have to be any more grammatical than judges are on the transcript, but I did ask Mr. Levine in my question No. 5 what the hearing officer may be supposed to have meant, or was it just garble, when he said, "release at this time would depreciate the seriousness of your mandatory release." Have you figured out what he was talking about or what he meant to be talking about?

MR. LEVINE: Your Honor, once again I would just like to state for the record that I have Mr. Quirk here who could explain that to you.

THE COURT: Did he explain it to you?

MR. LEVINE: Yes, he did, your Honor.

THE COURT: Tell me what he told you.

MR. LEVINE: Your Honor, that is a phrase that Mr. Quirk used to reflect his position, that the petitioner had, by his activities, had indicated a lack of his respect for the mandatory release program, and that there was no evidence of the petitioner's conformity to the conditions of

the mandatory release program, and that to release him at that time, in view of his activities, would depreciate the parole board's view of the mandatory release program and depreciate the petitioner's view of his mandatory release program.

And that if the -- that's all. I think that covers it.

MR. CARSON: Your Honor, may I comment on that, please? This is a boilerplate response as given to thousands of persons whose paroles are revocated annually, and to me it seems the height of ludicrousness to even suggest that the mandatory release process, whereby I have earned statutorially through good behavior and also extra good time through far above good behavior -- to even suggest that that process would be in any way diminished by permitting me to roam the streets at will, to me is absolutely insane because I have not been convicted of a crime, I have no detainers pending against me at this point, and most important, the two charges on the violation warrant are a direct result of the fact that Mr. Berger mailed the report, the monthly report, to me at my hotel under the alias, which I was convicted under in 1971, a name which I had not used since then, a name under which I was not registered at the time --

THE COURT: Yes, I am aware of that. He said you

scored a point on that.

MR. CARSON: Right. Thank you.

THE COURT: Mr. Levine, the record before me shows that Mr. Carson, when he was taken into custody in Mississippi, requested a local hearing on the alleged violation. As I read the regulations, they make that appropriate and desirable where it is feasible in the circumstances. I don't find in the record any statement of the reason why that procedure which was requested was not followed. Will you tell me why he was not given a local hearing?

MR. LEVINE: I understand from the U.S. Board of Parole, General Counsel's Office, your Honor, that a multiplicity of factors are considered when that request is made and that it is basically an administrative decision for the convenience of all of the parties.

Local in this context, your Honor, does not necessarily mean where the petitioner was arrested and is being detained. Local also can refer, and in fact does refer, to the origin of the petitioner's conviction here and the location of his probation officer, which would also be the location of his files and the location of witnesses who could testify on behalf of or against the petitioner.

While Mr. Carson was in Biloxi, Mississippi, and

that location may have been local to him, he was supposed to have been in New York, New York, and that was really the locality of the petitioner's parole.

And the reason for bringing the petitioner back to New York was for basically those reasons, your Honor, the locality of his probation officer -- excuse me, the location of his probation officer, his files, the witnesses that were available; and while it was local to him in Beloxi, there was nothing in Beloxi --

THE COURT: I understand what you said. Mr. Carson?

MR. CARSON: Your Honor, the last statement of the U.S. Attorney, to the effect that there was nothing in Beloxi, is absolutely incorrect. I had a witness who had to pay for his own airfare round trip to fly up here to offer mitigating and extenuating information, and it was a young man who could ill afford to do so, and had the hearing been held in Beloxi, the government's attorney could have been flown down, if that was the requirement of the government, and in that regard Morrissey v. Brewer, on page 2603, states that "On the request of the parolee, a person who has given adverse information on which parole revocation is to be based, is to be made available for questioning in his presence."

At that time I asked that Mr. Berger be brought to Mississippi and that the local hearing be held in Gulf Port, which is where the county jail was I was being held in, and I was refused that opportunity, and in this paragraph I have just read the Court deals specifically with the preliminary hearing, not the final revocation hearing, but the preliminary hearing.

I would like for that to be part of the record, that I did ask he be flown down. Instead of that, I was brought up here and my witnesses were forced to -- several witnesses who might have come were unable to do so because of the financial burden of a $200 round trip air flight.

THE COURT: Now, Mr. Carson, as I understand your situation, before you went to Mississippi or, more importantly, your situation now, the parole board takes the view that you ought to be kept within the Southern District of New York if you are on parole, and you seem to insist on going to Beloxi, Mississippi.

Now, it seems to me clear, in the first instance, that where you must reside is a decision for the parole board and not for the Court. There are decisions, one of which I have written, overruling a parole board determination that somebody should be confined to a certain place or forebidden to travel, but still that is for the parole board to

decide first off.

Now, if you were to be released, is it your position that you would be unable to live an orderly life in New York and that you would have to be going off to Beloxi or someplace, or would you stay in New York until the parole board gave you permission to go somewhere else?

MR. CARSON: Well, if the circumstances dictated it, I would definitely stay here until given permission to go elsewhere.

But in that regard, I would like to point out that I had gone to Beloxi to set up a discotheque, none of which exist in that area, it is a tourist area. The opportunity had presented itself on the spur of the moment, and fortunately the day before yesterday I called down there, the opportunity still exists there.

The only reason I was released to New York City is because this is where I was convicted. I have no friends or relatives here, I have never worked here. Unemployment in my particular field, which is computer science and also the booking of rock bands, is virtually non-existent because the field is glutted in both areas, and in the Beloxi area, I had lived for three years booking and managing rock groups.

In addition to the discotheque, I would be doing that kind of work.

So for me to be forced to live in New York City would immediately put me on the welfare rolls. And on the other hand, if I were to be permitted to go to Beloxi, I have already got an apartment rented down there. The people, Mr. Gill, who testified at my hearing, has already rented me an apartment; and to that end the discotheque lease agreement is still pending and I can have the business going down there very quickly.

And that's what I want to do, I want to earn an honest living, and if I'm forced to stay in New York I'll be put on the welfare rolls and I prefer not to do that. And I would think perhaps the taxpayers would prefer it, also.

THE COURT: All right. Do you want to speak to that subject at all, Mr. Levine?

MR. LEVINE: No, your Honor.

THE COURT: The questions that I had before I came here this morning have been substantially covered in this discussion, and as far as I am concerned we approach the conclusion of the oral hearing except that I will permit both sides to add anything that may be thought appropriate.

Mr. Carson, is there anything else you want to say at this point?

MR. CARSON: No, your Honor. I think -- may I take a look at my notes, please? I did just want to

specifically point out that I had requested that the -- Mr. Berger be present in Mississippi. That request was denied me.

I did want to point out that the parole application, the warrant application, specified two charges. Those two charges I had written a letter in lieu of the supervision report. Mr. Berger alleges he didn't get it. Yet in that letter I listed Mr. Gill's home address and, strangely enough, that is the specific address the FBI came to to arrest me.

The other charges I feel are outside the scope of the parole board's inquiry.

And certainly I would prefer to live in Mississippi because in addition to the reasons I just cited, your Honor, concerning employment and welfare, is the fact that I think that there would certainly be a grief if not open animosity, I think it would be difficult for this U.S. Probation Office to approach it in a detached fashion, the continued supervision of this petitioner.

And quite frankly, I would be somewhat concerned about -- in view of the "fairness" displayed by Mr. Berger at the hearing, I would be concerned about whether or not that might not be continued in this same district.

THE COURT: Mr. Levine?

MR. LEVINE: Your Honor, the government submits, as stated in its memorandum of law, that as a matter of law the government feels the petition should be dismissed.

Your Honor, in addition, in the event of an adverse decision to the government and an order from the government to release the petitioner, the government would request a stay of the execution of that order.

THE COURT: How long a stay would you want?

MR. LEVINE: At least 30 days, your Honor, so that we can present the issue --

THE COURT: The liberality with which the parole board tosses around periods like 30 days of incarceration suggests strongly to me that, like most of us judges, most members of the parole board have not spent a lot of time in jail.

I think in the setting of this case to lean back casually and ask for a 30-day stay, assuming the Court issues the so-called great writ, is fantastic, really fantastic.

You may be sure I will not give you a 30-day stay, but I must express on the record the Court's regret that government counsel would have thought that 30 days were necessary to go ask a Court of Appeals judge to stay the write of habeus corpus in a case of this kind. It adds to a picture which I must say, if I were the head of the parole

board, and Mr. Ziegler is a man I much respect, I would not be interested in having spread on the public records a picture of delay and neglect and indifference, a picture of casual and prejudicial conduct in a hearing, a picture of mistakes throughout, of seeming and unexplained vindictiveness against a man who served to mandatory release time, committed no crime, and then is held to expiration. This is kind of a final touch that fits that record and I must say it is a sorry record as I see it at this moment subject to further review.

I will not give you a 30-day stay. I don't know whether you want to reconsider your application. You do not have to, I will give you whatever stay I think is fair and sufficient, but if you want to take some different position on the record, I will let you do that.

MR. HEMLEY: Let me just speak to that briefly, your Honor, at the risk of interceding in this proceeding.

The reason 30 days is necessary, as your Honor I am sure is aware, is that it is necessary for the government, in the event of an adverse decision of this kind, to present the issues to the Solicitor General.

THE COURT: I used to work for the Solicitor General, but it used to occur to us in those olden days that while we were considering to take an appeal we could also

consider that the government could risk enlarging on bail desperatoes like Mr. Carson whose crime, to begin with, was not a violent one; but no, no suggestion of that, stay the writ, keep him over in the Metropolitan Correction Center while we decide whether to take an appeal.

I must say, it is of a piece with the whole conduct of this proceeding.

MR. HEMLEY: Obviously your suggestion of enlarging Mr. --

THE COURT: His name is Carson.

MR. HEMLEY: Thank you, your Honor. --enlarging Mr. Carson's bail is one that we would consider. There is also the competing consideration of the effect to Mr. Carson of having his sentence in fact interrupted by having him enlarged on bail and then if the decision is adverse, having his life in Beloxi, or wherever he might be residing, interrupted to the extent of bringing him back here.

THE COURT: Are you willing to leave that choice to him or do you feel that you will worry about his position in that respect on his behalf?

I can understand what you are saying, but it seems to me that is something that Mr. Carson would be better able to judge than either you or I.

MR. HEMLEY: I think in one sense Mr. Carson

obviously is in a better position to judge that. In the other sense, however, I think that there is a governmental interest in not interrupting the service of sentence.

THE COURT: What is that interest? I have been across the street to the correctional center and I want you to explain to me on this record how an interruption of a sojourn there would affect some interest that the government is concerned with.

MR. HEMLEY: I think that there is simply an interest in the continuity of the sentence.

THE COURT: You said that. But what is that interest?

MR. HEMLEY: I think that the interest is an obvious one, the sentence is imposed and it should continue until it has expired.

THE COURT: Even if some judge by his lights has decided that it is a proper case for release on the writ of habeus corpus which until it is reversed is a view a Court has taken? That is what we are talking about, a stay of an order of the Court, not just a casual intrusion.

MR. HEMLEY: Until the order has been passed upon by the Court of Appeals, it is, of course, not an order which is ultimate.

THE COURT: Okay. So your application will be if

the writ issues for a 30-day stay pending an appeal?

MR. HEMLEY: Correct.

THE COURT: Okay. Here is your letter back. I have conveyed my views of this proceeding tentatively to the government and I am given to understand that the government feels this is a record that it should stand on, and Mr. Carson has been dealt with fairly and that the revocation should stand; isn't that correct, gentlemen?

MR. LEVINE: That's correct, your Honor.

THE COURT: Okay. Thank you.

Send that cassette right up. And get the other materials you are supposed to deliver to us.

MR. LEVINE: Yes, your Honor.

THE COURT: Mr. Levine, order the transcript, please, and I will get a copy of it.

MR. LEVINE: So ordered.

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A 159

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S. DISTRICT COURT
JAN 23 1976
S. D. OF N. Y.

UNITED STATES ex rel.
BIRCHEL LEONARD CARSON,

-v-

LARRY TAYLOR, Warden,
Metropolitan Correction Center
and JOHN T. CONNALLY, Chief,
Probation Officer, Southern
District of New York,

Defendants.

AFFIDAVIT

75 Civ. 4398 (M.E.F.)

STATE OF NEW YORK )
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ALAN LEVINE, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of THOMAS J. CAHILL, United States Attorney for the Southern District of New York and am fully familiar with the facts of this case.

2. This Affidavit is submitted pursuant to the Court's request made at the hearing conducted on November 11, 1975.

3. Section 2.25 of Title 28, Code of Federal Regulations, provides that a prisoner may file an appeal with the Regional Director from a decision of the panel of hearing examiners to revoke mandatory release. That appeal must be filed within thirty days from the entry of the decision of the panel of hearing examiners.

:ow
1150



4. Your deponent has been advised by the Office of General Counsel of the United States Board of Parole that once that appeal is filed, the Regional Director renders a decision on the appeal in the normal course within seven to ten days.

5. Section 2.26 of Title 28, Code of Federal Regulations, provides that a prisoner may file an appeal with the National Appellate Board from a decision of the Regional Director. That appeal must be filed within thirty days from the entry of the decision of the Regional Director.

6. Your deponent has been advised by the Office of General Counsel of the United States Board of Parole that once that appeal is filed, the National Appellate Board renders a decision in the normal course within seven to ten days.

7. Your deponent has been further advised by the Office of General Counsel of the United States Board of Parole that appeals from parole revocation hearings are given priority in the appellate process described herein over appeals from a denial of parole.

Alan Levine

ALAN LEVINE
Assistant United States Attorney

Sworn to before me this

12th day of November, 1975

Jeanette Ann Grayeb

JEANETTE ANN GRAYEB
Notary Public, State of New York
No. 24-1541575
Qualified in Kings County
Commission Expires March 30, 1977

Parole Form H-20
(Rev. 1[illegible]/12/74)

UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
Washington

A 161

# WARRANT APPLICATION

TO: United States Board of Parole. Region Northeast Date 7/1/75

Case of BIRCHEL LEONARD CARSON Reg. No. 03870-116

Race White Birth Date 8/2/40 FBI No. 884 927 D

Sentence 5 years - RA District from S/NY

Original offense Transport Forged Checks Interstate

Sentence began 6/16/72 Released 1/30/75

District to S/NY Transferred to M.R. X Parole

Violation date On or about 6/1/75 Termination date 5/13/76

A prisoner who is retaken on the basis of a warrant issued by a Board Member shall be given a preliminary interview by an official designated by the Regional Director to determine if there is probable cause to hold the prisoner for a revocation hearing.

1. FAILURE TO SUBMIT SUPERVISION REPORT
As of 6/25/75 Mr. Carson has failed to submit his supervision reportsfor the month of May 1975, according to USPO Berger's report of 6/25/75.

2. FAILURE TO REPORT CHANGE IN RESIDENCE
On or about 6/1/75 Mr. Carson left his approved residence at the Hotel Empire, 44 West 63rd Street, New York City, N. Y. has failed to report his change in residence to his USPO, according to USPO Berger's report of 6/25/75. Mr. Carson's current whereabouts is unknown.

USA 33[illegible]-475
(ED. 4-23-71)

COURT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

1 1X

Date Warrant Issued 7/2/75

District to which sent S/N.Y.

JS/mm

Warrant recommended by:

JOHN F. SICOLI, Senior Analyst
U.S. Board of Parole

BOARD FILE

no file

A 162

PCS:im
75-3817

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA ex rel. BIRCHEL LEONARD CARSON,

Petitioner,

-v-

LARRY TAYLOR, Warden, Metropolitan Correctional Center and John T. Connolly, Chief Probation Officer, Southern District of New York,

Respondents.

----------x

NOTICE OF APPEAL

75 Civ. 4398 (MEF)

FILED
JAN 7 2 31 PM '76
U.S. DISTRICT COURT
S.D. OF N.Y.

PLEASE TAKE NOTICE that Larry Taylor and John T. Connolly, respondents above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order granting petitioner's writ of habeas corpus and directing that petitioner be released from custody, entered in this action on November 14, 1975.

New York, New York
January 7, 1976.

Yours, etc.,

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for Respondents

By: Peter C. Salerno
PETER C. SALERNO
Assistant United States Attorney
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TO: BIRCHEL LEONARD CARSON
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c/o The Coffee Grinder
Edgewater Plaza
Biloxi, Mississippi 39531

Issued C&P 1/7/76 EB

1/7/76 Notice Mailed mb

Clerks, USCA
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NYC 10007

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